(2) Supreme Court, U.S.
FILED

04-661 NOV 8 2004

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

BONNIE J. KORESKO and
JOHN J. KORESKO, V,

Petitioner

v.

MARK FARLEY, SEATON ROSS, L.P., TOWNSHIP OF TREDYFFRIN, BRYN MAWR CUSTOM HOME, INC., and OLLIE BOWER,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

APPENDIX VOLUME II

JOHN J. KORESKO, V., ESQUIRE
200 West Fourth Street
Bridgeport, PA 19405
(610) 992-2200
Petitioner Pro Se and on Behalf of Bonnie Koresko

Wright Appellate Services
(215) 733-9870 • (800) 507-9020 • Fax (215) 733-9872

APPENDIX

Exhibits to Appendix H 405a

Exhibits to Appendix J 455a

Exhibits to Appendix L 457a

Exhibits to Appendix M 462a

Appendix N – **Excerpts** From Unconsolidated Pennsylvania Statutes Title 53 Municipal Corporations 478a

Exhibits to Appendix H

ANDERSON KILL & OLICK, P.C.
BY: Virginia Miller, Esquire
Identification No. 85361
1600 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 568-4202

Attorney for Plaintiffs

JOHN J. KORESKO, V, et al.,

Plaintiffs,

v.

MARK FARLEY, et al.,

Defendants.

COURT OF COMMON PLEAS
CHESTER COUNTY, PA

NO. 01-05343

NOTICE OF ORAL DEPOSITION

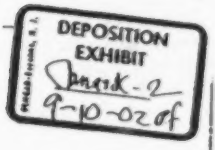
TO: Joseph A. Janasik
c/o Susan C. Mangold, Esquire
Lamb, Windle & McErlane, PC
24 East Market Street
P.O. Box 565
West Chester, PA 19381-0565

PLEASE TAKE NOTICE that, in accordance with the applicable Rules of Civil Procedure, plaintiffs, by their attorney, will take the oral deposition of, Joseph A. Janasik before a person duly authorized to administer oaths, on Tuesday, September 10, 2002, at 1:00 p.m., at the Office of the Court Reporter, 20 North Church Street, West Chester, PA 19380 and to continue from day to day until completed.

The deponent is directed to bring with him to the deposition all documents including, but not limited to any and all investigative/inspection notes, reviews, permits, reports, permit applications, plot plans, inspection requests, and correspondence relating or referring to the property located at 1175 and 1185 Seaton Ross Road, Radnor, Pennsylvania.

PHDOCS:30881.1

DEPOSITION EXHIBIT
Janasik-1
9-10-02-of



Koresko & Associates

A PROFESSIONAL CORPORATION

John J. Koresko, V *
James D. Bomsey **

Attorneys

508 North Gulph Road
Suite 501
King of Prussia, Pennsylvania 19406
(610) 993-2200
Fax (610) 992-1091

* Certified Public Accountant
* Also Admitted in Florida
** Also Admitted in New Jersey

June 6, 2000

Mr. Dennis Torres
Tredyffrin Township
1100 Dupont Road
Berwyn, PA 19312

Fax 610-993-9185

Re: Construction project
1175/1185 Seanna Ross Road
Demand for cease and desist order

Dear Mr. Torres:

This will confirm my telephone conversation with you today. I am the owner of the property at 1159 Seanna Ross Road. I worked closely with Eric Hawkins on this project.

It has come to my attention that the 2+ acre parcel at 1185 Seanna Ross Road has been sold. This is the parcel adjacent to mine. I understand that building permits have been issued for the construction of new houses. In fact, construction has been done. You represented to me that Mark Farley is the builder. I wanted to make you aware of my opposition to this project, and certain ordinances or conditions of subdivision which may have been violated.

First, when I purchased my property, I investigated the adjoining property (1185) and determined that it had not been subdivided. In the three years I have owned my property, I have received no notice of any proposed subdivision. Therefore, I respectfully request all information regarding the subdivision, especially the lay-out of the flag lot. There was no flag lot on any tax map. Since I believe notice of the subdivision was not properly given, I submit that the construction should be stopped.

Secondly, the property in question was heavily wooded in the rear. There appeared to be ground water accumulations which resulted in the growth of foliage common to wetlands. In addition, I believe there may be other types of protected foliage. I believe these need to be inspected. As of the moment, bulldozers are involved in destroying evidence. The forest involved is home to numerous species of wildlife, and I am sure no consideration has been given to the destruction planned in this matter.

Third, Mr. Hawkins told me that the Township requires that contractors have demonstrated financial abilities and an absence of problems before they will be issued licenses. Please be advised that Mark Farley was the subject of Chapter 11 Bankruptcy proceeding in the Eastern District of Pennsylvania, case no. 92-13203 BIF (jointly administered with no. 92-13202 DAS). Although the case appeared to be closed in 1994, Mr. Farley defaulted on his Chapter 11 plan, thus leaving many creditors unpaid. I believe that this type of behavior disqualifies Mr. Farley from being an appropriate licensee for construction in Tredyffrin Township. Moreover, I believe that an investigation should be done as to the status of unpaid

BEST AVAILABLE COPY

[illegible] Dennis Torres
[illegible] 5, 2000
[illegible] 2

affiliates were involved in. Because of Farley's prior financial debacles, I believe that investigations should be done to assess his solvency.

I believe any building permits for multiple houses will place undo strain on sewer and water utilities that exist on Seaton Ross Road. Initially, the 1135 property as well as 1139 were on septic systems. The sewers were obviously constructed with the number of houses in mind that were apparent at that time. Water pressure in that area is already suspect. The construction of two houses, instead of one on the 1135 parcel I believe should be restricted until further inspection of feasibility.

The construction of the flag lot next to my property and the placement of the driveway will result in new drainage problems which appear probable of damaging my property, including the undermining of my pool and the structures beneath the surface of the ground which support the new grading on my property. The properties slope backward from the roadway, approximately 20 feet in grade to the back of the property. Increased water flow is inevitable because of the driveway. Since I was never given the chance to participate in the process, it appears that drainage effects were overlooked.

Already, Prudential Fox and Roach are in violation of the sign ordinance. There are two signs on the property which exceed the maximum allowable for real estate signs.

There are numerous children in the area. The roads are not wide enough nor well enough maintained to accommodate the traffic of the construction of these houses, both of the equipment and the increased use. There is a very sharp corner at the Seaton Ross and Hobbs that barely accommodates the traffic, and it will get progressively unsafe with these new houses.

I believe the workmen are already in violation of ordinances concerning public nuisances, as they have begun their slashing, cutting and grinding quite early in the morning.

In general, I believe these permits should not have been issued. I believe there has been an error in the subdivision process. Finally, I believe the building plans are probably defective in numerous respects.

I respectfully demand that all construction immediately be ceased until these concerns are addressed. In addition, I request that you make immediately available to me all documents and license applications in connection with Farley and this project so that I may make inspection at the Township building. I am especially interested in the file concerning the alleged subdivision.

Thank you for your kind consideration of these matters.

Very truly yours,

John J. Kovesko, V

JJK/
enclosures

408a

Koresko & Associates

A PROFESSIONAL CORPORATION

Address
630 N. Gulph Road
Suite 301
King of Prussia, Pennsylvania 19406
(610)992-3330
(610)992-4099

Fax Cover Sheet

Date: 6/6/00

To: Mr Terry Woodman Asst Twp Mgr Fax Number: 610 993 9188

From: John Koresko Pages including cover: 2

RE: Bldg permit C6519

Notice of appeal of Bldg permit

PLEASE CALL IF ALL PAGES ARE NOT RECEIVED OR IF FACSIMILE QUALITY IS POOR

DEPOSITION EXHIBIT
3 Danzik
9-10-02 DF

Received Jun-07-00 02:20pm from CCITT G3 - TREDYFFRIN TOWNSHIP page 2
JUN-07-2000 14:22 P.02/02

Koresko & Associates

A PROFESSIONAL CORPORATION

Attorneys

John J. Koresko, V *°
Jeanne D. Bonney **

500 North Gulph Road
Suite 501
King of Prussia, Pennsylvania 19406
(610) 992-2200
Fax (610) 992-1091

° Certified Public Accountant
* Also Admitted in Florida
** Also Admitted in New Jersey

June 7, 2000

William H. Lamb, Esquire
Lamb, Windle & McErlane, P.C.
24 E. Market St., P.O. Box 565
West Chester, PA 19381-0565

Fax 610-692-6210

Re: 1175/1185 Seaton Ross Road
Tredyffrin Township, PA
Appeal of Building Permit No. C6519

Dear Mr. Lamb:

I am writing to you in your capacity as Solicitor for Tredyffrin Township. I am the owner of the property located adjacent to the above referenced parcel. A building permit was issued on May 30, 2000 relating to a new residential construction project at 1175 Seaton Ross Road.

I spoke to officials at Tredyffrin Township, and sent the attached correspondence. For reasons stated therein, and other reasons, we hereby APPEAL the issuance of the building permit to the Zoning Hearing Board.

I would appreciate it if you would immediately advise the Township that this permit is suspended pending disposition of the appeal. Already, there has been the beginning of construction. This has resulted in the blockage of Seaton Ross Road with construction vehicles so as to create a safety hazard. In addition, construction workers have begun trespassing on my property.

Thank you for you kind consideration. I look forward to hearing from you.

Very truly yours,

John J. Koresko, V

JJK/
enclosures

TOTAL P.02

3

Koresko & Associates

A PROFESSIONAL CORPORATION

Attorneys

John J. Koresko, V *
Jeanne D. Bonacy **

500 North Gulph Road
Suite 501
King of Prussia, Pennsylvania 19406
(610) 992-2200
Fax (610) 992-1091

* Certified Public Accountant
* Also Admitted in Florida
** Also Admitted in New Jersey

July 9, 2001

Vincent M. Pompo, Esquire
Lamb, Windle & McErlane, P.C.
24 E. Market St., P.O. Box 565
West Chester, PA 19381-0565

Fax 610-692-6210

Re: 1175/1185 Seaton Ross Road
Tredyffrin Township, PA
Violations of Subdivision Plan
Koresko v. Farley, No. 01-05343 (Chester Co. C.C.P.)

Dear Mr. Pompo:

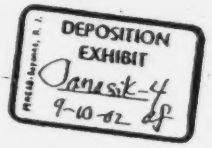
I am writing to you in your capacity as associate to the Solicitor for Tredyffrin Township. I am the owner of the property located adjacent to the above referenced parcel. As you know, I filed an equity complaint in Chester County to gain redress against the developer, Mark Farley and his affiliated entities.

I have enclosed a copy of the subdivision plan for your review. The Complaint notes the violations of the plan, but I have noted on the plan the locations of five trees that Farley cut down on the property, as well as three trees cut down on adjacent properties.

According to the notes on the plan, it was supposed to be implemented consistent with the letter from the Chester County Planning Commission, dated February 16, 2000. A copy of the letter is enclosed. That letter stated specifically at page 2, paragraph 6, that trees shown on the plan were to be maintained. ["The limit of tree removal should be shown on the plan."] Moreover, the letter contained a proviso that construction should not take place within the tree drip-line, as this would result in damage to trees and roots.

A close look at the plan shows that the Township was deceived. First, it is clear that the plan does not show the trees of adjoining landowners, like me. If those trees had been displayed, the Township would have seen that Farley was planning to build within the drip-lines of those trees. Of course, the drip lines are also the approximate location of roots. The letter from the planning commission contemplated protection of these items.

Second, the plan shows some trees that were to be cut down. I respectfully submit that there were far more trees on the lot, and far more trees were cut down. This can be demonstrated by visiting the lot. One will see that there are mature hardwood trees on the lot that are not on the plan.



Third, the plan shows trees that were to be maintained. On the plan I have enclosed, I have marked with a red "X" and number the "maintained trees" that have been removed from the site.

Fourth, the plan shows the location of the front house as being directly in front of the rear house. This is the configuration that the Township approved. Subsequently, Farley moved the front house to the northwest corner of the front lot.

Fifth, the Farley has done construction within the 25 feet side-yard set-backs. For each house, Farley buried a 1,000 gallon propane tank in the set-back. This was not shown on the plan, and I am sure it would not have been approved. These tanks are very close to each house, as well as to the property lines. The approximate location of the tanks is drawn on the enclosed plan.

Sixth, I have shown on the plan where the driveway to the back lot has crossed the lot line onto my property.

Generally, Farley violated the plan by interfering with the rights of adjoining landowners and damaging my property. He also intentionally disregarded the conditions of subdivision mandated by the Chester County Planning Commission and incorporated by reference into the plan via the note.

If you have any other questions, I will be happy to answer them for you. I look forward to hearing from you.

Very truly yours,

John J. Koresko, V

JJK/

enclosures

cc: Virginia I. Miller, Esquire

THE COUNTY OF CHESTER

COMMISSIONERS:
Karen L. Martynick, Chairman
Colin A. Hanna
Andrew E. Dinniman

WILLIAM H. FULTON, AICP
Executive Director

PLANNING COMMISSION
Government Services Center, Suite 270
601 Westtown Road
P.O. Box 2747
West Chester, PA 19380-0990
610-344-6285
FAX: 610-344-6515

EXHIBIT

February 16, 2000

Joseph A. Janasik, Secretary/Manager
Tredyffrin Township
1100 Duportail Road
Berwyn, PA 19312

Re: Final Subdivision – 1185 Seaton Ross Road (Ollie J. Bower)
10701 – Tredyffrin Township

Dear Mr. Janasik:

A final subdivision plan entitled "1185 Seaton Ross Road", prepared by RKW Engineering Services, dated October 11, 1999 and last revised December 9, 1999, was received by this office on January 21, 2000. The subdivision is situated on the east side of Seaton Road south of Hobbs Road and involves the creation of a 1.34 acre parcel (Lot 2) from the existing 2.24 acre parent tract (tax parcel 43-7J-8). There is an existing residence on Lot 1 (0.77 acres). The lots will be served by public water and sewer. The project site is located in the R-1 Residence zoning district. We note that a portion of this site adjoins Upper Merion Township in Montgomery County to the north.

This plan is reviewed by the Chester County Planning Commission in accord with the provisions of Section 502 of the Pennsylvania Municipalities Planning Code (MPC). This report does not review the plan for compliance to all aspects of your ordinance, as this is more appropriately done by agents of the Township. We offer the following comments on the proposed subdivision for your consideration:

GENERAL COMMENTS:

1. We note that there are several technical errors for the required signature blocks, which include the following: 1) the plan should reflect municipal and County review dates in the year 2000; 2) the County signature block should state that the plan has been reviewed, not approved, by the Chester County Planning Commission; and 3) the Chester County Recorder of Deeds Office is located in West Chester, not Norristown. These errors should be corrected by the applicant. The Township should not grant final plan approval until the applicant has submitted a plan that meets all municipal Ordinance requirements for a plan submission.

2. The zoning regulation notes on the plan states that the minimum lot width standard is 100 feet. Section 208-22A of the Township Zoning Ordinance states that the minimum lot width in the R-1 zoning district is 100 feet at the building line. This should be corrected.

DEPOSITION EXHIBIT
Janasik - 5
9-18-02 dt

ACCESS AND CIRCULATION:

3. We note that the proposed driveway for Lot 2 will have a slope of 14 percent. The Township Engineer should verify that this proposed driveway is in conformance with the Township Ordinances with regard to grade and sight distance.

4. We offer as a suggestion that the applicant should try to obtain permission to use the existing driveway to the east of the lot.

NATURAL FEATURES PROTECTION:

5. A portion of the site contains moderate to steep slopes which are proposed to be re graded. Slopes in excess of 25 percent should be protected by maintaining at least 80 percent of the area in undisturbed cover. Slopes of 15 to 25 percent should be protected by maintaining at least 70 percent of the area in undisturbed cover. For 8-15 percent slopes, erosion and sedimentation control plans for development should be carefully inspected to ensure that they control potential erosion on the site.

6. The plan and a 1995 aerial photograph indicate that a portion of the site is wooded. If development is to occur within the woodlands, the removal of trees should be limited to the minimum area needed for the dwelling and support facilities and the limit of tree removal should be shown on the plan. Any grading within the area of the dripline (the perimeter of the tree's branches) of the trees to be preserved increases the possibility of tree damage.

7. The Township Engineer should verify that the design and capacity of the proposed stormwater facilities conforms to ordinance provisions.

CRITICAL WATER AREA:

8. The subdivision is located within an area identified as a critical water area. The Township should verify that the proposed stormwater management measures are designed and installed to prevent degradation of the Township's groundwater resources.

LANDSCAPES:

9. The 1996 Chester County Comprehensive Plan, *Landscapes*, designates the area of the proposed subdivision as a Suburban Landscape. Suburban Landscapes include areas where infrastructure and public services have been, or should be, extended to accommodate residential development and shopping and employment centers. The Plan encourages design flexibility and a mix of density and uses, either through revitalization or infill, within the Suburban Landscape. This proposal is consistent with the guidelines for the Suburban Landscape.

ADMINISTRATIVE NOTE:

10. A minimum of four (4) copies of the plan should be presented at the Chester County Planning Commission for endorsement to permit recording of the final plan in accord with the procedures of Act 247, The Pennsylvania Municipalities Planning Code, and to meet the requirements of the Recorder of Deeds and the Assessment Office.

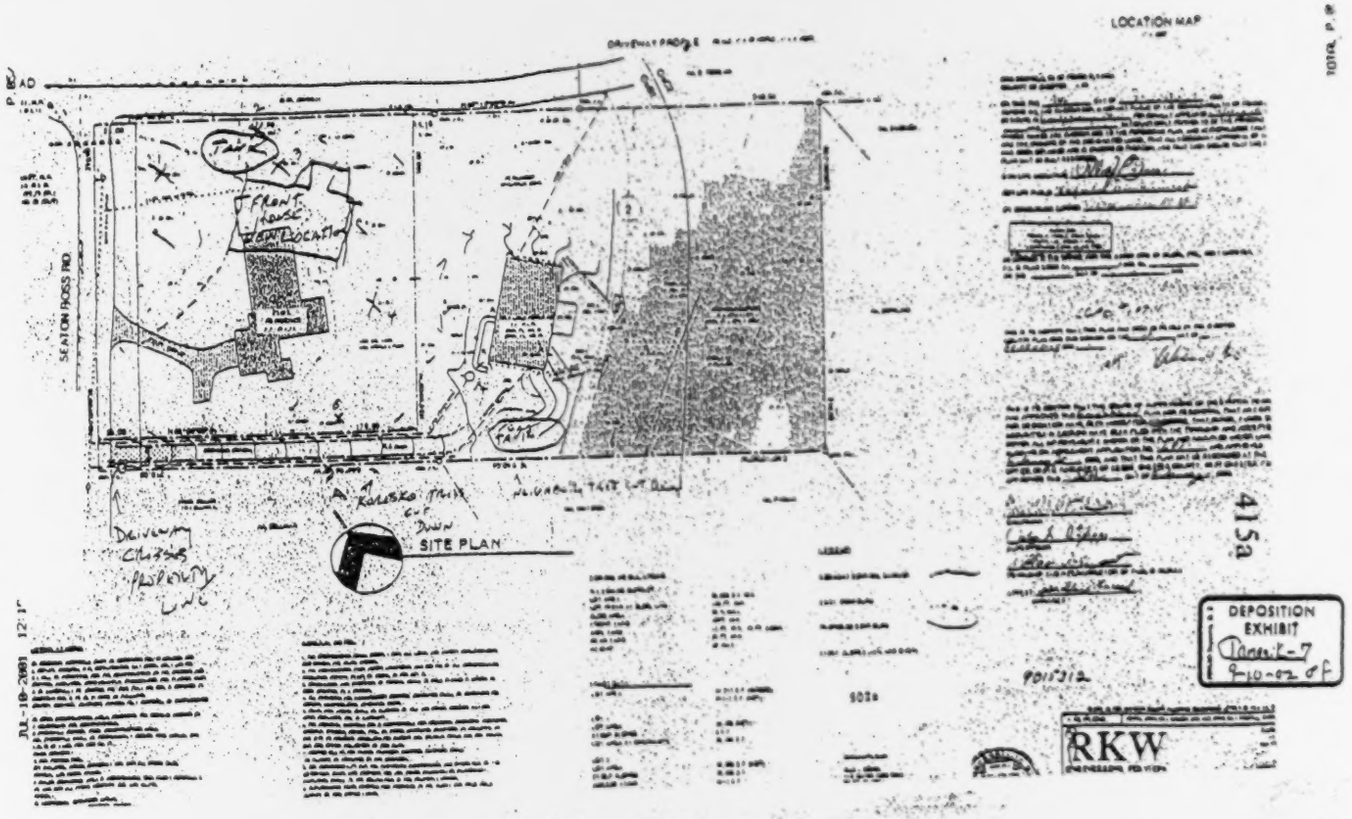
RECOMMENDATION: **The Commission recommends that the issues raised in this letter be addressed and all Township requirements be satisfied before action is taken on this plan.**

Sincerely,

William H. Fulton, AICP
Secretary

WHF/PF/kp

cc: Ollie J. Bower
RKW Engineering Services
Paul W. Olson, Board of Supervisors Chairman, Tredyffrin Township
Jeffrey C. May, Planning Commission Chairman, Tredyffrin Township
Terry Hone Woodman, Assistant Township Manager, Tredyffrin Township
Ronald Wagenmann, Manager, Upper Merion Township
Montgomery County Planning Commission


LOCATION MAP
SEATON PASS RD
SITE PLAN
DEPOSITION EXHIBIT
Isaacs-7
9-10-02
RKW

LAMB, WINDLE & McERLANE, P.C.
24 EAST MARKET STREET, BOX 565, WEST CHESTER, PA 19381-0565

William H. Lamb
Voice: (610) 430-8000
Fax: (610) 692-2405
wlamb@dlmcelaw.com

August 7, 2002

John J. Koresko, V, Esquire
Koresko & Associates
P.O. Box 60157
King of Prussia, PA 19406

Virginia I. Miller, Esquire
Anderson, Kill & Olick, P.C.
1600 Market Street, 32nd Floor
Philadelphia, PA 19103

Re: Koresko v. Mark Farley et al., CCCCP No. 01-53433

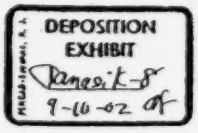
Dear Mr. Koresko and Ms. Miller:

Enclosed please find Tredryffrin Township's Answer to Plaintiffs' Amended Complaint, which was filed today.

Also enclosed you will find several cases which the Township believes support its position that the Plaintiffs have absolutely no claim against the Township. At best, the Plaintiffs have a simple trespass claim against Seaton Ross L.P. Dragging the Township into this matter and forcing it to expend money to defend the frivolous claims against the Township is an abuse of process. I now understand that you seek to take the depositions of two Township officials. I urge you to read the enclosed cases and to reconsider proceeding with this lawsuit against the Township.

As far as the propane tanks are concerned, I am still at a loss as to the Plaintiffs' standing to complain about the propriety or impropriety of propane tanks on a neighboring property. In any event, the Township took action to have any problems remedied. Accordingly, any claims that the Plaintiffs thought they had with regard to the propane tanks are now moot.

Should the Plaintiffs choose to proceed with this lawsuit against the Township, you are hereby notified that any and all remedies that the Township has against the Plaintiffs for engaging in a frivolous lawsuit and abuse of process, including those set forth under the Dragonetti statute, will be explored.



I look forward to hearing from you by next Wednesday, August 14, 2002. Otherwise, I will infer that you have rejected my request and the Township will proceed accordingly.

Very truly yours,

William H. Lamb

Enclosures
WHL/aes
cc: Scott E. Yaw, Esquire (w/encl)
Wayne W. Congar, Esquire (w/encl)
Vincent M. Pompo, Esquire
Susan C. Mangold, Esquire

LWM

418a

TREDYFFRIN TOWNSHIP

FA SCIMILIE MEMORANDUM

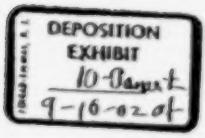
TO: Mark Farley
FAX: 610-520-9581
FROM: Emmy Baldassarre, Code Enforcement Officer
Phone 610-408-3614 Fax 610-993-9186
SUBJECT: Final Certificate of Occupancy Inspection, 1175 Seaton Ross Road
DATE: April 2, 2001
PAGES: 1

Please address the following and contact me for a reinspection to issue your Certificate of Occupancy

1. Install a mailbox at the driveway with the address
2. Hot water heater not turned on. No hot water in the house.
3. Door to hot water heater room impacts the water pipe upon opening
4. Extension on water heater pressure valve to within 6" of floor
5. Red cover plate required on heater shut off switch
6. Wires in electrical closet not connected?
7. Seal ceiling penetrations at vacuum pipes in basement closet
8. No evidence of screens. All openable windows require screens
9. Trap and water in laundry sink not connected
10. Roof shingles around skylight adjacent deck?
11. Front walk slate creates a tripping hazard
12. Installation of Air Conditioner?

DEPOSITION EXHIBIT
Jasunk-9
9-10-02 of

Street Address: 1175 Seaton Ross Rd.
General Contractor: Mark Farley
Owner/Tenant: Ollie Bower



From: Dennis Torres, Building Inspector
Subject: Initial plan review results
Date: 5.08.2000

A preliminary review has been made of the application package you have submitted. The following comments are made for your attention and/or correction.

A HVAC permit application package is required. Provide sizing calculations and contract.

A plumbing permit application package is required. Provide plumbing riser diagram and contract.

Act 222, Pennsylvania Energy Conservation Act, compliance is required.

The plans indicate several options are available. Indicate which options are to be constructed on this site.

Tempered glass shall be used in all hazardous locations per B-2405 and 16 CFR Part 1201.

Submit the manufacture's cut sheet for prefabricated fireplace.

The plans show a truss roof system (for garage) is to be employed. Submit a truss engineer's signed and sealed truss design and construction plan for the truss system for the township's review and approval.

Specify the method of damp proofing for the basement.

The ceiling of attached garages with living space above shall consist of a double layer of 5/8" type "X" gypsum wallboard. The joints shall be staggered.

No opening in the common wall between the attached garage and the living space shall be less than 4 inches above the finished floor level of the garage. This includes hvac openings.

Provide a level landing at the foot of the deck stair.

Builder to specify the manufacturer and brand of floor trusses to be used on the job. Floor trusses shall be listed by BOCA or NER or installation requirements and engineer's calculations shall be submitted.

Specify the method of damp proofing in for the basement.

Provide forms or sonotubes to enable a minimum of 2" protrusion of the concrete pier above

EXHIBIT N

BOARD OF SUPERVISORS
TREDYFFRIN TOWNSHIP
CHESTER COUNTY
1100 DuPortail Road
Berwyn, PA 19312
(610) 644-1400 FAX (610) 993-9186

Joseph A. Janesik
Township Manager

William H. Lamb
Solicitor

October 1, 1997

John J.V. and Bonnie J. Koresko V
1159 Seaton Ross Road
Wayne, PA 19087

Re Tax Parcel No. 43-7J-9
1159 Seaton Ross Road

Dear Mr. and Mrs. Koresko:

I am writing in regards the condition of the above referenced property in response to complaints the Township received from your neighbors including:

1. The basement window is open furnishing an entry way for rodents, small animals and children.

2. The pool cover may be torn exposing the pool water beneath.

3. The fence around the pool has fallen and serves no useful purpose.

Please contact me at 610-408-3614 to discuss the above matters.

Very truly yours,

Emeline K. Baldassarre
Code Enforcement Officer

Inspect Window Cover
and Side
Pool Fence 2-21-97-6300

Pending Applications for Fence

DEPOSITION EXHIBIT
Janesik-11
9-10-02 RT

facsimile
TRANSMITTAL

Name:	MARK FARLEY
Organization:	FARLEY DEVELOPMENT CO
Fax:	610-520-9501
Phone:	610-586-8800
From:	MICHAEL V. PILOTTI
Date:	07-05-02
Subject:	1175 & 1185 SEATON ROSS RD., PERMIT APPLICATION
Pages:	1

I'M CORRESPONDING TO YOU WITH THE RESULTS OF MY REVIEW OF YOUR APPLICATION SUBMITTED FOR UNDERGROUND TANK PLACEMENT FOR THE ABOVE REFERENCED PROPERTIES.
THE APPLICATIONS AS SUBMITTED ARE DENIED DUE TO SAID PLACEMENT WILL BE IN CONFLICT WITH TOWNSHIP ZONING REGULATIONS.
IT IS MY UNDERSTANDING THAT PROPANE TALKS HAVE BEEN INSTALL UNDERGROUND AT THE SAID PROPERTIES WITHOUT OBTAINING A REVIEW AND OR THE REQUIRED PERMITS TO DO SO. THEREFORE I HAVE NO CHOICE, GIVEN THE CIRCUMSTANCES THAN TO ORDER THE REMOVAL OF THE ILLEGAL TANKS IMMEDIATELY. SUBMIT A REVISED PLOT PLAN SUGGESTING A LOCATION THAT WILL COMPLY WITH SAID ZONING REGULATIONS ALONG WITH THE REQUIRED INSPECTION REQUEST FORM.
I STRONGLY RECOMMEND THAT THIS WORK BE DONE WITHOUT DELAY SO TO AVOID ANY FINES THAT COULD BE ISSUED UNDER THE TOWNSHIP CODE AND THE BUILDING CODE TO ALL PARTIES INVOLVED.
PLEASE CONTACT MY OFFICE ALONG WITH YOUR SUBCONTRACTOR SO THAT WE CAN ALL BE ON THE SAME PAGE TOWARD RESOLVE AND AVOID SUCH ACTION.
THANK YOU IN ADVANCE FOR YOUR PATIENCE AND COOPERATION WHILE UNDER ADVISEMENT IN THIS MATTER. I MAY BE REACHED AT 610-408-5612 DIRECTLY.

MICHAEL V. PILOTTI
BUILDING INSPECTOR
TREDYFFRIN TOWNSHIP

CC: Jack B. Tull
Joseph A. Janesik

F:\WPDATA\PILOTTI\FARLEY1175.wpd

DEPOSITION EXHIBIT
Janesik-12
7-10-02 DF

LAMB, WINDLE & McERLANE, P.C.
By: William H. Lamb, Esquire
Attorney I.D. #04927
By: Vincent M. Pompo, Esquire
Attorney I.D. #37714
By: Susan C. Mangold, Esquire
Attorney I.D. #78892
24 East Market Street, P.O. Box 565
West Chester, PA 19381
Telephone: (610) 430-9000

FILED
02 AUG -1 PM 4:17
OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

JOHN J. KORESKO, V, et al.,	:	IN THE COURT OF COMMON PLEAS
Plaintiffs	:	CHESTER COUNTY, PENNSYLVANIA
v.	:	NO. 00-05343
MARK EARLEY, et al.,	:	
Defendants	:	

ANSWER OF DEFENDANT TOWNSHIP OF TREDYFFRIN TO PLAINTIFFS' AMENDED COMPLAINT IN EQUITY

Defendant, Township of Tredyffrin ("Tredyffrin" or "Township"), by and through its counsel, Lamb, Windle & McErlane, P.C., hereby answers Plaintiffs' Amended Complaint in Equity as follows.

1. Admitted.

2. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

DEPOSITION EXHIBIT
Tarnoff-13
9-10-02 DF

3. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

4. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

5. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

6. Denied as stated. Tredyffrin is a Home Rule Municipality. It specifically is denied that the Tredyffrin's supervisors, employees or agents took any actions that gave rise to any causes of action set forth in Plaintiffs' Amended Complaint. To the contrary, at all times relevant hereto, the actions of Tredyffrin were in compliance with the applicable ordinances.

7. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the

allegations in this paragraph and, consequently, said averments are denied.

8. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

9. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

10. Denied as stated. The Agreement of Sale relative to the 1175-1185 Property was between Defendant Ollie Bower and M.J Farley Development Co., Inc. and/or its assignees.

11. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

12. Admitted upon information and belief.

13. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, said subdivision plan was filed in compliance with the applicable ordinances.

14. Admitted in part, denied in part. It is admitted that no individualized notice of the filing of the subdivision plan was given. It specifically is denied that the Municipalities Planning Code ("MPC") or any other Township ordinance requires that notice of the filing of a subdivision plan be given to an adjoining landowner. Moreover, the subdivision approval process relative to the subject property was conducted at numerous advertised public meetings and, upon information and belief, Plaintiffs never participated in said meetings.

15. Admitted.

16. Denied as stated. It is admitted that Ollie Bower signed the subdivision plan. By way of further answer, the Township solicitor recorded the plan in the official records of Chester County.

17. Denied as the subdivision plan speaks for itself. By way of further answer, the subdivision plan shows a water line in the flagpole of the flag lot to connect to Seaton Ross Road.

18. Denied as the subdivision plan speaks for itself.

19. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

20. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

21. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

22. Denied as the subdivision plan speaks for itself. By way of further answer, it specifically is denied that the Municipalities Planning Code or any other Township ordinance

required the depiction of any trees beyond those shown on the subdivision plan.

23. Denied as Tredyffrin Code sections 181-39 and 181-43 speak for themselves.

24. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

25. Admitted.

26. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, the subdivision plan and building code speak for themselves.

27. Denied as stated. It is admitted Plaintiff sought to appeal the issuance of the building permit. It specifically is denied that there were any grounds for the Township to do so. By way of further answer, the subdivision approval process relative to the subject property was conducted at numerous advertised public

meetings and, upon information and belief, Plaintiffs never participated in said meetings.

28. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

29. Denied as the Application for Building Permit speaks for itself.

30. Denied as the Application for Use and Occupancy Permit speaks for itself.

31. It is admitted that Building Permit No. C 6519 was issued by Tredyffrin on May 31, 2000. Any characterizations of said permit specifically are denied as the permit speaks for itself.

32. Denied as the Residential Building Sanitary Sewer Construction Application speaks for itself.

33. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the

allegations in this paragraph and, consequently, said averments are denied.

34. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

35. Denied as the subdivision and building plans speak for themselves.

36. Denied as stated. At the time of the filing of this Complaint, installation of propane tanks at 1175 and 1185 Seaton Ross Road had been performed without the express permission of the Township. By way of further answer, any prior illegal installation of the propane tanks has since been remedied. Specifically, a permit was issued for the installation of a 500 gallon UG propane tank at 1195 Seaton Ross Road on or about July 11, 2002. A permit was issued for the installation of a 500 gallon UG propane tank at 1175 Seaton Ross Road on or about July 11, 2002. Copies of these permits are attached as Exhibit "A" hereto. Upon information and belief, the propane tanks as originally installed have since been removed and reinstalled in complete compliance with the MPC and Zoning Regulations.

37. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, upon information and belief, the installation of said propane tanks was done in compliance with the MPC and Zoning Regulations.

38. Denied for the reason that answering defendant does not know what Plaintiffs mean by "setback areas". By way of further answer, upon information and belief, the installation of the propane tanks was done in compliance with the MPC and Zoning Regulations.

39. Denied for the reasons set forth in paragraph 36, above.

40. Denied for the reason that answering defendant does not know what Plaintiffs mean by "subject residence". By way of further answer, upon information and belief, the installation of the propane tanks was done in compliance with the MPC and Zoning Regulations.

41. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the

allegations in this paragraph and, consequently, said averments are denied

42. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, there is nothing in any Township ordinance that prohibits the construction of a driveway or other grading as depicted on the subdivision plan. While there may be a private right of action in trespass, said right is not enforceable against the Township.

43. Denied. To the contrary, neither the Municipalities Planning Code nor any other Township ordinance requires the depiction of any trees beyond those shown on the subdivision plan.

44. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

45. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the

allegations in this paragraph and, consequently, said averments are denied.

46. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

47. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

48. Admitted upon information and belief.

49. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

50. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

51. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

52. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

53. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

54. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

55. Denied. To the contrary, permit no. 6456 for 1175 Seaton Ross Road, Wayne, Pennsylvania was issued on or about April 6, 2001 and permit no. 6492 for 1185 Seaton Ross Road, Wayne, Pennsylvania

was issued on or about June 25, 2001. The complaint in this matter was filed on or about June 25, 2001.

56. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

57. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

58. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

59. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

60. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

61. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

COUNT I

62. Defendant incorporates herein by reference its answers to paragraphs 1 through 61 of Plaintiffs' Amended Complaint, above, as though same were set forth herein at length.

63. Denied as stated. The subdivision plan speaks for itself. By way of further answer, it specifically is denied that the Municipalities Planning Code or any other Township ordinance required the depiction of any trees beyond those shown on the subdivision plan.

64. Admitted.

65. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

66. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

67. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

68. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further action, the alleged damage contemplates a private cause of action in trespass, which cause of action is not enforceable against the Township.

69. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the

allegations in this paragraph and, consequently, said averments are denied.

70. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, any inference that there was in fact a prescriptive easement on the subject property specifically is denied.

71. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

72. Denied as a conclusion of law to which no response is required. By way of further answer, the applicable Township ordinances do not require that prescriptive dripline easements be noted on a subdivision plan.

WHEREFORE, Defendant Township of Tredyffrin respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs.

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COUNT II

73. Defendant incorporates herein by reference its answers to paragraphs 1 through 72 of Plaintiffs' Amended Complaint, above, as though same were set forth herein at length.

74. Denied. To the contrary, the subdivision plan was filed in compliance with the applicable ordinances. By way of further answer, the applicable Township ordinances do not require that prescriptive dripline easements be noted on a subdivision plan.

75. Denied. To the contrary, the subdivision plan was filed in full compliance with the applicable ordinances. Further, it specifically is denied that the MPC or any other Township ordinance required the depiction of any trees other than those trees shown on the subdivision plan. By way of further answer, the applicable Township ordinances do not require that prescriptive dripline easements be noted on a subdivision plan.

76. Denied as the Subdivision Plan speaks for itself.

77. Denied as a conclusion of law to which no response is required. By way of further answer, the subdivision plan was filed in full compliance with the applicable ordinances.

78. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied.

79. Denied as a conclusion of law to which no response is required.

WHEREFORE, Defendant Township of Tredyffrin respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs.

COUNT III

80. Defendant incorporates herein by reference its answers to paragraphs 1 through 79 of Plaintiffs' Amended Complaint, above, as though same were set forth herein at length.

81 Denied. To the contrary, the Township did not take any actions that have or will destroy unique assets of Plaintiffs. In fact, at all times relevant hereto, the Township acted in accordance with the applicable ordinances governing the subdivision of a property.

82. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, the alleged damage contemplates a private cause of action in trespass, which cause of action is not enforceable against the Township.

83. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, the alleged damage contemplates a private cause of action in trespass, which cause of action is not enforceable against the Township.

84. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, the alleged damage contemplates a private cause of action in trespass, which cause of action is not enforceable against the Township.

85. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are

denied. By way of further answer, the alleged damage contemplates a private cause of action in trespass, which cause of action is not enforceable against the Township.

86. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the allegations in this paragraph and, consequently, said averments are denied. By way of further answer, the alleged damage contemplates a private cause of action in trespass, which cause of action is not enforceable against the Township.

87. Denied as stated. Upon information and belief, at the time of the filing of this Complaint, installation of propane tanks at 1175 and 1185 Seaton Ross Road had been performed without permits and without the express permission of the Township. By way of further answer, any prior illegal installation of the propane tanks has since been remedied. Specifically, a permit was issued for the installation of a 500 gallon UG propane tank at 1185 Seaton Ross Road on or about July 11, 2002. A permit was issued for the installation of a 500 gallon UG propane tank at 1175 Seaton Ross Road on or about July 11, 2002. See Exhibit "A". Upon information and belief, the propane tanks as originally installed have since been removed and reinstalled in complete compliance with the MPC and Zoning Regulations.

88. Denied as a conclusion of law to which no response is required. By way of further answer, the subdivision plan was filed in full compliance with the applicable ordinances. Moreover, the damages alleged in the Complaint contemplate a private cause of action in trespass, which cause of action is not enforceable against the Township.

89. Denied as a conclusion of law to which no response is required.

WHEREFORE, Defendant Township of Tredyffrin respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs.

COUNT IV

90. Defendant incorporates herein by reference its answers to paragraphs 1 through 89 of Plaintiffs' Amended Complaint, above, as though same were set forth herein at length.

91. Denied as a conclusion of law to which no response is required. Moreover, the damages alleged in the Complaint contemplate a private cause of action in trespass, which cause of action is not enforceable against the Township.

92. Denied as a conclusion of law to which no response is required. Moreover, the damages alleged in the Complaint contemplate a private cause of action in trespass, which cause of action is not enforceable against the Township.

WHEREFORE, Defendant Township of Tredyffrin respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs.

COUNT V

93. Defendant incorporates herein by reference its answers to paragraphs 1 through 92 of Plaintiffs' Amended Complaint, above, as though same were set forth herein at length.

94. Denied. It specifically is denied that the Township acte "in concert with" Defendant Farley or Bower or any other perso Said allegations are outrageous and unfounded. By way of furt answer, at most the damages alleged in the Complaint contempla private cause of action in trespass, which cause of action i enforceable against the Township.

95. Denied as a conclusion of law to which no resp required. By way of further answer, at most the damages al

the Complaint contemplate a private cause of action in trespass, which cause of action is not enforceable against the Township.

WHEREFORE, Defendant Township of Tredyffrin respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs.

COUNT VI

96. Defendant incorporates herein by reference its answers to paragraphs 1 through 95 of Plaintiffs' Amended Complaint, above, as though same were set forth herein at length.

97. Denied as a conclusion of law to which no response is required.

98. Denied as a conclusion of law to which no response is required.

99. Denied as a conclusion of law to which no response is required.

100. Denied. It specifically is denied that the Township acted "in concert with" Defendant Farley or Bower or any other person. Said allegations are outrageous and unfounded. By way of further

105. If any cause of action exists relative to the facts set forth in Plaintiffs' Amended Complaint, said cause of action is a private cause of action, which is not enforceable against the Township.

106. In the event the Township and/or any of its co-defendants are found liable to Plaintiffs on any of the causes of action asserted in the Amended Complaint, the liability of the Township being expressly denied, the Township demands that its liability and that of its co-defendants be apportioned in accordance with the respective degree of fault of each defendant found liable.

107. Any liability on the part of the Township, which liability is expressly denied, is secondary and passive, whereas the liability of other parties or individuals is primary and direct.

108. At all times relevant, the Township performed each and every duty, if any, owed to Plaintiffs.

109. Plaintiffs have failed to state a claim against the Township upon which relief may be granted.

110. The Township owed no duty to Plaintiffs.

111. At all relevant times, the Township conformed and complied fully with all applicable laws and Township ordinances pertinent to the matters alleged.

112. Plaintiffs' claims are barred by their failure to conduct a reasonable investigation of the facts and circumstances alleged in the Complaint.

113. Plaintiffs' claims are barred or limited by the applicable statute of limitations.

114. Plaintiffs' claims are barred by the doctrine of laches.

115. Plaintiffs' claims are barred by the doctrine of equitable estoppel.

116. Plaintiffs' claims are barred by waiver and consent.

117. Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted.

118. Plaintiffs' claims are barred by the doctrine of ratification.

119. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

120. Plaintiffs' claims are barred by the doctrine of justification.

121. Plaintiffs' claims are barred in whole or in part by reason of its failure to mitigate damages, if any.

122. Plaintiffs have not sustained any damages.

123. Plaintiffs' claims are barred by the Statute of Frauds.

124. Answering Defendant hereby incorporates by reference as though set forth at length herein all of the beneficial defenses, affirmative defenses and new matter averred in each and every of the answering pleadings filed by all co-defendants.

WHEREFORE, Defendant Township of Tredyffrin respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs.

NEW MATTER IN THE NATURE OF CROSSCLAIMS DIRECTED TO DEFENDANTS MARK FARLEY, OLLIE BOWER, BRYN MAWR CUSTOM HOME, INC. AND SEATON ROSS, L.P., PURSUANT TO PA.R.C.P. 2252(D)

CROSSCLAIM FOR COMMON LAW INDEMNIFICATION

125. The Township believes and therefore avers that if the allegations in Plaintiffs' Amended Complaint are proven to be true at trial, such allegations being expressly denied, then one or more of the other Defendants are liable over to the Township on Plaintiffs' causes of action sued upon in the Complaint.

WHEREFORE, Defendant Township of Tredyffrin seeks common law indemnification against Mark Farley, Ollie Bower, Bryn Mawr Custom Home, Inc., and Seaton Ross, L.P., for any judgment rendered in favor of Plaintiffs, together with costs and counsel fees.

CROSSCLAIM FOR CONTRIBUTION

126. The Township believes and therefore avers that if the allegations in Plaintiffs' Amended Complaint are proven to be true at trial, such allegations being expressly denied, then one or more of the other Defendants are wholly liable on Plaintiffs' causes of action sued upon in the Amended Complaint.

127. The Township believes and therefore avers that if the allegations in Plaintiffs' Amended Complaint are proven to be true at trial, such allegations being expressly denied, then one or more of the other Defendants are jointly and/or severally liable with the Township on Plaintiffs' causes of action sued upon in the Amended Complaint.

WHEREFORE, Defendant Township of Tredyffrin seeks contribution from Mark Farley, Ollie Bower, Bryn Mawr Custom Home, Inc., and Seaton Ross, L.P., for any judgment rendered in favor of Plaintiffs, together with costs and counsel fees.

Respectfully submitted,

LAMB, WINDLE & McERLANE, P.C.

Date: August 7, 2002

By: Susan C. Mangold

William H. Lamb, Esquire
Vincent T. Pompo, Esquire
Susan C. Mangold Esquire

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EXHIBIT "A"

BEST AVAILABLE COPY

Letter SWTF

BUILDING PERMIT

Office 451a

Expire

NOTICE

Core excavations and driveway installations must comply with requirements of the Township Engineer or Director of Public Works before installed

SUPERVISORS OF TREDYFFRIN TOWNSHIP
100 Dorchester Road
BERWYN PA 19312

Conditions of occupancy are noted for all Buildings

Receipt No	Date	Tax Map Number	Zoning District	Date issued	Permit No
32317	5/17/02	43-03-8.1	R-1	5 / 31 / 02	C8962

Scully Propane Service
Name

Oak Avenue & B&O R.R., Collingdale, PA 19023
(Address)

Permit for installation of 500 gallon UG Propane tank, per plan.

Comply with BOCA NMC/93 and NFPA 58

location: 1175 Seaton Ross Road Radnor PA 19087

In accordance with application No 02-1471 and plan No on file filed with the Build

Inspector, subject to the provisions of the Township Ordinances

NOTICE

This permit does not relate to plumbing or as connections with the sanitary sewer system nor does it cover work on highways or the storage of materials thereon. Separate permits must be obtained immediately for existing installations and connections to sanitary sewer system.

Received fee of one hundred seventy-five & 00/100 DOLLARS($ 175.00)

Secretary MG

VOID IF ACTIVE WORK IS NOT COMMENCED WITHIN SIX MONTHS FROM DATE OF ISSUE

Est. Cost $ 1,775.00 Owner M. J. Farley Development Company

452a

Office of the

Expire 2/15/03

SUPERVISORS OF TREDYFFRIN TOWNSHIP
1100 Duportail Road
BERWYN, PA 19312

Certificates of occupancy are required for all buildings

Date	Tax Map Number	Zoning District	Date issued	Permit No.
1/02	43-7J-8	R-1	2 / 11 / 02	C8963

Oak Avenue & B&O R.R., Collingdale, PA 19023
(Address)

500 gallon UG Propane tank, per plan.

OCA NMC/95 and NFPA 58.

Seaton Ross Road Radnor PA 19087

ation No. 02-1470 and plan No. on file filed with the Building

provisions of the Township Ordinances

mbing or its connec- Received fee of one hundred seventy-five & 00/100 DOLLARS($ 175.00)
tem not does it cover
s of materials thereon
ined immediately for
done to sanitary sewer Secretary MG

E WORK IS NOT COMMENCED WITHIN SIX MONTHS FROM DATE OF ISSUE

Est. Cost $ 1,775.00 Owner M. J. Farley Development Company

VERIFICATION

I, Joseph A. Janasik, verify and affirm that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Joseph A. Janasik, Secretary/Manager
Tredyffrin Township

JOHN J. KORESKO, V, et al., : IN THE COURT OF COMMON PLEAS

Plaintiffs : CHESTER COUNTY, PENNSYLVANIA

v. : NO. 00-05343

MARK FARLEY, et al., :

Defendants. :

FILED
'02 AUG -7 PM 4:11
OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

CERTIFICATE OF SERVICE

This is to certify that in this case, complete copies of the foregoing have been served upon the following persons, by the following means and on the date(s) stated:

Name:	Means of Service:	Date of Service:
John J. Koresko, V, Esquire Koresko & Associates, P.C. P.O. Box 60157 King of Prussia, PA 19406	First Class Mail	August 7, 2002
Virginia I. Miller, Esquire Anderson, Kill & Olick, P.C. 1600 Market Street, 32nd Floor Philadelphia, PA 19103	First Class Mail	August 7, 2002
Wayne W. Congar, Esquire Wayne W. Congar & Associates 1548 McDaniel Drive West Chester, PA 19380	First Class Mail	August 7, 2002
Scott E. Yaw, Esquire Lentz, Cantor & Massey, Ltd. 20 Mystic Lane Chester County Commons Malvern, PA 19355-1942	First Class Mail	August 7, 2002

LAMB, WINDLE & McERLANE, P.C.

By: Susan C. Mangold

William H. Lamb, Esquire #04927
Vincent M. Pompo, Esquire #37714
Susan C. Mangold Esquire #78892
24 East Market Street
West Chester, PA 19380
(610) 430-8000

Exhibits to Appendix J

Office of the

NOTICE

Cuts, excavations and obstructions must comply with regulations, obtain Township Engineer or Director of Public Works before backfilling

SUPERVISORS OF TREDYFFRIN TOWNSHIP
1100 Duportail Road
BERWYN, PA. 19312

Certificates of occupancy are required for all Buildings

Receipt No.	Date	Tax Map Number	Zoning District	Date Issued	Permit No.
32317	5/17/02	43-7H-8	R-1	/ /	C8952

Scully Propane Service (Name) Oak Avenue & B&O R.R., Collingdale, PA 19023 (Address)

Permit for installation of 500 gallon UG Propane tank, per plan. *

Comply with BOCA NMC/93 and NFPA 58.

location: 1185 Seaton Ross Road Radnor PA 19087

in accordance with application No 02-1470 and plan No. on file filed with the Building Inspector, subject to the provisions of the Township Ordinances

NOTICE

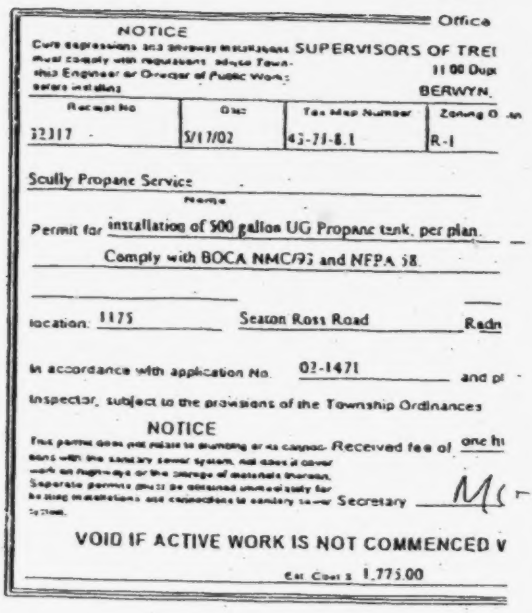
This permit does not relate to plumbing or the connection with the sanitary sewer system, nor does it cover work on highways or the storage of materials thereon. Separate permits must be obtained immediately for sewer installations and connections to sanitary sewer system.

Received fee of one hundred seventy-five & 00/100 DOLLARS($ 175.00)

Secretary MAG

VOID IF ACTIVE WORK IS NOT COMMENCED WITHIN SIX MONTHS FROM DATE OF ISSUE

Est. Cost $ 1,775.00 Owner M. J. Farley Development Company



Office

NOTICE

Curb depressions and driveway installations SUPERVISORS OF TREI must comply with regulations, advise Town- 11 00 Dupl
ship Engineer or Director of Public Works BERWYN,
before installing

Receipt No.	Date	Tax Map Number	Zoning D
32317	5/17/02	43-7J-8.1	R-1

Scully Propane Service
Name

Permit for installation of 500 gallon UG Propane tank, per plan.

Comply with BOCA NMC/93 and NFPA 58.

location: 1175 Seaton Ross Road Radn

in accordance with application No. 02-1471 and pl

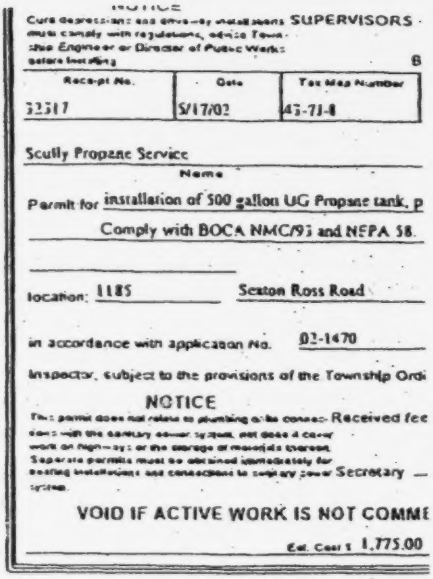
Inspector, subject to the provisions of the Township Ordinances

NOTICE

This permit does not relate to plumbing or its connec- Received fee of one hi
tions with the sanitary sewer system, nor does it cover
work on highways or the storage of materials thereon.
Separate permits must be obtained immediately for
existing installations and connections to sanitary sewer Secretary MC
system.

VOID IF ACTIVE WORK IS NOT COMMENCED V

Est. Cost $ 1,775.00



NOTICE

Curb depressions and driveway installations SUPERVISORS
must comply with regulations, advise Town-
ship Engineer or Director of Public Works
before installing B

Receipt No.	Date	Tax Map Number
32317	5/17/02	43-7J-8

Scully Propane Service
Name

Permit for installation of 500 gallon UG Propane tank, p

Comply with BOCA NMC/93 and NFPA 58.

location: 1185 Seaton Ross Road

in accordance with application No. 02-1470

Inspector, subject to the provisions of the Township Ordi

NOTICE

This permit does not relate to plumbing or its connec- Received fee
tions with the sanitary sewer system, nor does it cover
work on highways or the storage of materials thereon.
Separate permits must be obtained immediately for
existing installations and connections to sanitary sewer Secretary
system.

VOID IF ACTIVE WORK IS NOT COMME

Est. Cost $ 1,775.00

Exhibits to Appendix L

Since growth rates may vary according to soil fertility and availability of moisture, the growth rates for the Koresko trees were established by taking increment core wood samples from the trunks of Norway Maple #3 and White Oak #11. An increment core extracts a ¼ inch diameter wood sample from the tree trunk allowing examination of the wood and annual tree growth rings. It was determined that the Norway Maple grew 5 inches in 41 years or an average growth rate of 8.2 years per inch of trunk radius. It was determined that the White Oak grew 8 inches in 98 years or an average growth rate of 12 years per inch. Since increment cores are an invasive procedure, not all the trees were sampled. The growth rates from the sampled tree were used to estimate the age of all the other trees in question.

In scientific studies, Dr. Gary Watson of the Morton Arboretum established that tree roots can be expected to extend an average length of 18 inches per year in our latitude and climate. By dividing the distance each tree grew from the property line and dividing by 1.5 feet, the number of years until the roots crossed the property line can be estimated.

The following chart contains the calculations for each tree. Note that the roots of all the trees inventoried both crossed the property line and had crossed the line for more than 21 years

Inv. No.	Tree Name	Tree Circ.	Tree Diameter	Growth Rate	Estimated Age	Distance from Property Line	Years until roots cross Property Line	No. of years since roots crossed property line
1	Black Gum	48	15.3	8.2	62.6	4.25	2.8	59.8
2	Norway Maple	63	20.1	8.2	82.2	12.5	8.3	73.9
3	Norway Maple	40	12.7	8.2	52.2	4	2.7	49.5
4	Sassafras	43	13.7	8.2	56.1	8	5.3	50.8
5	Black Gum	36	11.5	8.2	47.0	3.5	2.3	44.6
6	White Oak	67	21.3	12	128.0	2.75	1.8	126.1
7	Hickory	44	14.0	8.2	57.4	1.6	1.1	56.4
8	Norway Maple	34	10.8	8.2	44.4	9.75	6.5	37.9
9	Norway Maple	26	8.3	8.2	33.9	3.5	2.3	31.6
10	Norway Maple	29	9.2	8.2	37.8	7.75	5.2	32.7
11	White Oak	66	21.0	12	126.1	12.75	8.5	117.6
12	Stump	22	7.0	8.2	28.7	0.5	0.3	28.4
13	Stump	?	?	?	?	?	?	?

Chart #2: Tree Age and Critical Calculations

These estimates clearly show that the trees had grown on the neighbor's property for more than the 21 years required to establish an easement. Because of the shallow far-reaching growth patterns of tree roots, there can be no doubt that the excavation for the driveway severed a significant amount of roots. In this regard, Tree preservation best management practices were disregarded by Tredyferin Township by their approval of the subdivision plan. Furthermore, the builder/developer also disregarded these tree protection guidelines. Trees whose roots are severed usually show little symptoms for a period of two or more

years. It is inevitable that these trees will decline and that many will die as a result of the excavation of the driveway and utility trench.

Not only did the tree roots establish an easement right, but most of the same trees extended branches over the property line for more than 21 years.

Inv. No.	Tree Name	Dist/Property L in Ft.	Dist. Dripline	Yrs till cross P.L. 4"/yr	Yrs since cross P.L. 4"/yr
1	Black Gum	4.25	13	12.8	26.3
2	Norway Maple	12.5	31	37.5	55.6
3	Norway Maple	4	30	12.0	78.1
4	Sassafras	8	14	24.0	18.0
5	Black Gum	3.5	21	10.5	52.6
6	White Oak	2.75	24	8.3	63.8
7	Hickory	1.5	11	4.5	28.5
8	Norway Maple	9.75	18	29.3	24.8
9	Norway Maple	3.5	20	10.5	49.5
10	Norway Maple	7.75	14	23.3	18.8
11	White Oak	12.75	28	38.3	45.8
12	Stump	.5	?	1.5	?
13	Stump	?	?	?	?

Chart #3: Branch Growth and Easement Establishment

Value of Loss Calculations:

Since the trees on the Koresko's property suffered damage because the tree preservation best management practices were not observed, Mr. Koresko wishes to be compensated for the value of his loss and to protect his tree and others from future damage. The appropriate value loss appraisal concept is the repair of the damaged property. With smaller trees, replacement of the damaged trees restores or repairs the property to the pre-existing condition. The trees involved with this damage are larger than can be replaced by purchase and planting from local and regional nursery sources.

Trunk Formula Method: Value of loss therefore must be derived from market condition. One way frequently used to calculate tree value for those trees larger than can easily be replaced is called the trunk formula method. The Council of Tree and Landscape Appraisers (CTLA) describes the trunk formula method in the ninth edition of the Guide for Tree and Landscape Appraisal. The CTLA council is represented by five green industry professional organizations. Calculation of the tree value begins with the cost to purchase and plant a 4-inch tree replacement. This replacement costs is used to calculate the dollar per square inch of the replacement tree's trunk cross section. This dollar per square inch value is then used to derive the value of the larger tree. Tree condition, landscape location, and species value are rated and used to adjust the final appraised value.

Using this trunk formula method, the total calculated value for the total loss of all 11 trees and 2 stumps is $44,406.41. Since Sassafras trees are difficult to transplant and are difficult or impossible to find from nursery sources. I substituted Norway Maple for

purposes of calculating the value of loss because Norway Maple is modest in price, readily available, and already exists in the landscape. The wood from stump #12 resembles Norway Maple; I calculated the value of loss for this tree using Norway Maple pricing. Stump #13 was never located but has some value. I assumed that it was a Norway Maple the same size and condition as Stump #12.

Compounding Costs for Replacement Plants: This method calculates investment return should the costs of the replacement plants be invested for the number of years required to grow the tree back to the same size. The following chart shows the calculations.

Inv. No.	Tree Name	Tree Age	No. yrs at planting	No. of Yrs to Grow Replace-ment	Value of Replace-ment Tree	Investment Costs (Compounded Interest at 3%)	Investment Costs (Compounded Interest at 4%)	Investment Costs (Compounded Interest at 5%)
1	Black Gum	62.6	10	52.6	$ 987.50	$ 4,674.93	$ 7,771.25	$ 12,855.66
2	Norway Maple	82.2	10	72.2	$ 1,450.00	$ 12,252.24	$ 24,613.60	$ 49,117.40
3	Norway Maple	52.2	10	42.2	$ 1,450.00	$ 5,047.76	$ 7,588.83	$ 11,364.66
4	Sassafras	56.1	10	46.1	$ 1,450.00	$ 5,664.53	$ 8,843.11	$ 13,746.58
5	Black Gum	47	10	37	$ 987.50	$ 2,947.91	$ 4,214.74	$ 6,005.39
6	White Oak	128	10	118	$ 462.50	$ 15,132.28	$ 47,320.11	$ 146,368.97
7	Hickory	57.4	10	47.4	$ 2,125.00	$ 8,626.67	$ 13,637.64	$ 21,465.04
8	Norway Maple	44.4	10	34.4	$ 1,450.00	$ 4,008.38	$ 5,588.75	$ 7,767.48
9	Norway Maple	33.9	10	23.9	$ 1,450.00	$ 2,938.85	$ 3,702.24	$ 4,653.63
10	Norway Maple	37.8	10	27.8	$ 1,450.00	$ 3,297.94	$ 4,314.15	$ 5,628.99
11	White Oak	126	10	116.1	$ 462.50	$ 14,305.85	$ 43,922.03	$ 133,410.30
12	Stump	28.7	10	18.7	$ 1,450.00	$ 2,520.14	$ 3,019.20	$ 3,610.84
13	Stump	28.7	10	18.7	$ 1,450.00	$ 2,520.14	$ 3,019.20	$ 3,610.84
				Value of Replacement Trees:	$ 16,625.00			
					Investment to Grow Replacement Trees using Compounded Interest:	$ 83,937.62	$ 177,554.84	$ 419,605.78

Chart #4: Compounded Cost for Replacement Trees

Site Clean-up Costs

In addition to the appraised value of the large trees, the death of existing trees necessitates the removal of the tree and stump. These calculations assume that access can only be gained from the Koresko's property.

This estimate is based on my own experience and corroborated by productivity figures established for removing trees and stumps in Toledo, Ohio. These productivity figures are published in the International Society of Arboriculture's *Journal of Arboriculture* [18(6) November 1992] in an article entitled "Performance Standards for Municipal Tree Maintenance" by Patrick R. O'Brien, Kenneth A. Joehlin and Daniel J. O'Brien. It was found in this study that the diameter class of the tree was positively correlated to the labor

hours required for its remov... ...lowing tree removal cost chart shows the assigned diameter class based on this study of each tree at issue on the Koresko property

Inv. No.	Tree Name	Trunk Diameter	Diameter Class	Tree Removal Hrs/tree	@$65/hr.
1	Black Gum	15.3	12.6" - 18.5"	3.94	$ 256.10
2	Norway Maple	20.1	18.6" - 24.5	5.39	$ 350.35
3	Norway Maple	12.7	12.6" - 18.5"	3.94	$ 256.10
4	Sassafras	13.7	12.6" - 18.5"	3.94	$ 256.10
5	Black Gum	11.5	6.6" - 12.5"	1.83	$ 118.95
6	White Oak	21.3	18.6" - 24.5	5.39	$ 350.35
7	Hickory	14	12.6" - 18.5"	3.94	$ 256.10
8	Norway Maple	10.8	6.6" - 12.5"	1.83	$ 118.95
9	Norway Maple	8.3	6.6" - 12.5"	1.83	$ 118.95
10	Norway Maple	9.2	6.6" - 12.5"	1.83	$ 118.95
11	White Oak	21	18.6" - 24.5	5.39	$ 350.35
12	Stump	7	n/a	n/a	n/a
13	Stump	?	n/a	n/a	n/a
			Total Hrs.:	39.25	$2,551.25

Chart #5: Tree Removal Cost Calculations – (*Toledo Study*)

The productivity figures for the Toledo study were based on use of a bucket truck and log loading equipment. Since access to these trees is only from the Koresko's property and access for equipment to the site is limited without collateral site damage, the price can easily be three times the Toledo study's costs. This would bring the cost of removing the remaining trees to: $2,551.25 X 3 = $7,653.75

The removal of the stumps and debris and filling the holes with topsoil are additional costs. The Toledo study calculated the labor hours to grind and remove tree stump debris as presented in Chart #6.

Inv. No.	Tree Name	Trunk Diameter	Diameter Class	Stump Removal Hrs/tree	@$65/hr.
1	Black Gum	15.3	12.6" - 18.5"	1.77	$ 115.05
2	Norway Maple	20.1	18.6" - 24.5	2.46	$ 159.90
3	Norway Maple	12.7	12.6" - 18.5"	1.77	$ 115.05
4	Sassafras	13.7	12.6" - 18.5"	1.77	$ 115.05
5	Black Gum	11.5	6.6" - 12.5"	1.26	$ 81.90
6	White Oak	21.3	18.6" - 24.5	2.46	$ 159.90
7	Hickory	14	12.6" - 18.5"	1.77	$ 115.05
8	Norway Maple	10.8	6.6" - 12.5"	1.26	$ 81.90
9	Norway Maple	8.3	6.6" - 12.5"	1.26	$ 81.90
10	Norway Maple	9.2	6.6" - 12.5"	1.26	$ 81.90
11	White Oak	21	18.6" - 24.5	2.46	$ 159.90
12	Stump	7	6" - 8.3	0.84	$ 54.60
13	Stump	?(7)	6" - 8.3	0.84	$ 54.60
			Total Hrs.:	21.18	$1,376.70

Chart #6: Stump Removal Cost Calculations

The Toledo stumps are conveniently adjacent to a road surface with ready access for trucks and equipment. The cost to remove stumps and restore the site could easily be 3 times the Toledo study costs or 3 X 1,376.70 = **$4,130.10**. This would bring the total for tree removal costs to $7,653.75 + $4,130.10 = **$11,783.85**.

Certification:

I certify that I am an ISA Certified Arborist (PD-006) and an ASCA Registered Consulting Arborist. The methods and opinions expressed in this report are my own, based on a reasonable degree of scientific certainty and in accordance with current arboriculture industry standards. These opinions are primarily based on my own investigation of relevant facts. Facts given by others about the events of the accident are assumed to be correct. I reserve the right to amend or supplement this report in the future based on new information or evidence.

Andrew William Graham, Jr. — September 26, 2002

Andrew William Graham, Jr.
ASCA Registered Consultant Arborist

Date:

American Society of Consulting Arborists * No. 343 *

Exhibits to Appendix M

THE COUNTY OF CHESTER

COMMISSIONERS:
Karen L. Marrynick, Chairman
Colin A. Hanna
Andrew E. Dinniman

WILLIAM H. FULTON, AICP
Executive Director

PLANNING COMMISSION
Government Services Center, Suite 270
601 Westtown Road
P.O. Box 2747
West Chester, PA 19380-0990
610-344-6285
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DEPOSITION EXHIBIT
Bower-1
9-6-02 JPH

February 16, 2000

Joseph A. Janasik, Secretary/Manager
Tredyffrin Township
1100 Duportail Road
Berwyn, PA 19312

Re: Final Subdivision – 1185 Seaton Ross Road (Ollie J. Bower)
10701 – Tredyffrin Township

Dear Mr. Janasik:

A final subdivision plan entitled "1185 Seaton Ross Road", prepared by RKW Engineering Services, dated October 11, 1999 and last revised December 9, 1999, was received by this office on January 21, 2000. The subdivision is situated on the east side of Seaton Road south of Hobbs Road and involves the creation of a 1.34 acre parcel (Lot 2) from the existing 2.24 acre parent tract (tax parcel 43-7I-8). There is an existing residence on Lot 1 (0.77 acres). The lots will be served by public water and sewer. The project site is located in the R-1 Residence zoning district. We note that a portion of this site adjoins Upper Merion Township in Montgomery County to the north.

This plan is reviewed by the Chester County Planning Commission in accord with the provisions of Section 502 of the Pennsylvania Municipalities Planning Code (MPC). This report does not review the plan for compliance to all aspects of your ordinance, as this is more appropriately done by agents of the Township. We offer the following comments on the proposed subdivision for your consideration:

GENERAL COMMENTS:

1. We note that there are several technical errors for the required signature blocks, which include the following: 1) the plan should reflect municipal and County review dates in the year 2000; 2) the County signature block should state that the plan has been reviewed, not approved, by the Chester County Planning Commission; and 3) the Chester County Recorder of Deeds Office is located in West Chester, not Norristown. These errors should be corrected by the applicant. The Township should not grant final plan approval until the applicant has submitted a plan that meets all municipal Ordinance requirements for a plan submission.

2. The zoning regulation notes on the plan states that the minimum lot width standard is 100 feet. Section 208-22A of the Township Zoning Ordinance states that the minimum lot width in the R-1 zoning district is 100 feet at the building line. This should be corrected.

ACCESS AND CIRCULATION:

3. We note that the proposed driveway for Lot 2 will have a slope of 14 percent. The Township Engineer should verify that this proposed driveway is in conformance with the Township Ordinances with regard to grade and sight distance.

4. We offer as a suggestion that the applicant should try to obtain permission to use the existing driveway to the east of the lot.

NATURAL FEATURES PROTECTION:

5. A portion of the site contains moderate to steep slopes which are proposed to be re graded. Slopes in excess of 25 percent should be protected by maintaining at least 80 percent of the area in undisturbed cover. Slopes of 15 to 25 percent should be protected by maintaining at least 70 percent of the area in undisturbed cover. For 8-15 percent slopes, erosion and sedimentation control plans for development should be carefully inspected to ensure that they control potential erosion on the site.

6. The plan and a 1995 aerial photograph indicate that a portion of the site is wooded. If development is to occur within the woodlands, the removal of trees should be limited to the minimum area needed for the dwelling and support facilities and the limit of tree removal should be shown on the plan. Any grading within the area of the dripline (the perimeter of the tree's branches) of the trees to be preserved increases the possibility of tree damage.

7. The Township Engineer should verify that the design and capacity of the proposed stormwater facilities conforms to ordinance provisions.

CRITICAL WATER AREA:

8. The subdivision is located within an area identified as a critical water area. The Township should verify that the proposed stormwater management measures are designed and installed to prevent degradation of the Township's groundwater resources.

LANDSCAPES:

9. The 1996 Chester County Comprehensive Plan, *Landscapes*, designates the area of the proposed subdivision as a Suburban Landscape. Suburban Landscapes include areas where infrastructure and public services have been, or should be, extended to accommodate residential development and shopping and employment centers. The Plan encourages design flexibility and a mix of density and uses, either through revitalization or infill, within the Suburban Landscape. This proposal is consistent with the guidelines for the Suburban Landscape.

BEST AVAILABLE COPY

ADMINISTRATIVE NOTE:

10. A minimum of four (4) copies of the plan should be presented at the Chester County Planning Commission for endorsement to permit recording of the final plan in accord with the procedures of Act 247, The Pennsylvania Municipalities Planning Code, and to meet the requirements of the Recorder of Deeds and the Assessment Office.

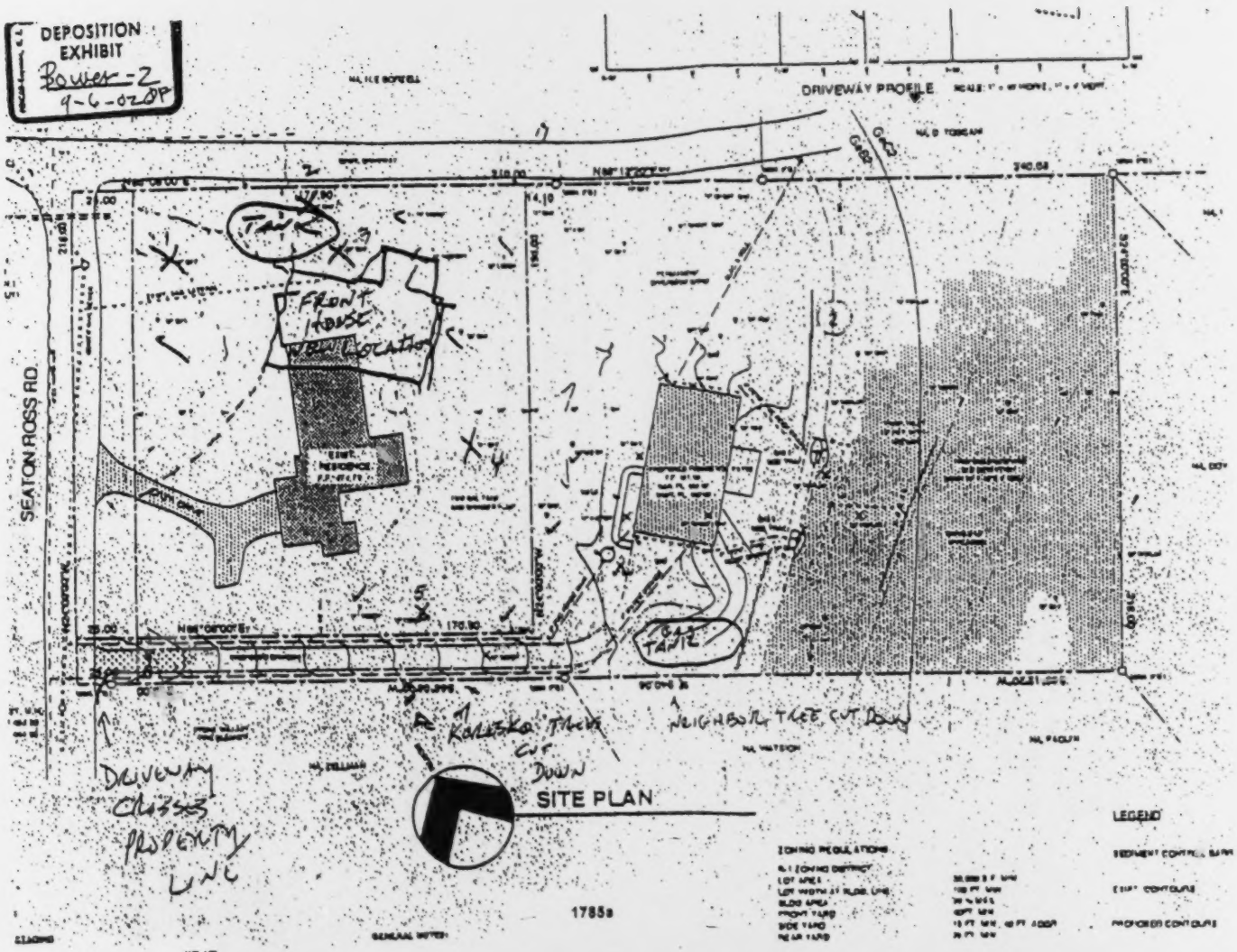
RECOMMENDATION: The Commission recommends that the issues raised in this letter be addressed and all Township requirements be satisfied before action is taken on this plan.

Sincerely,

William H. Fulton, AICP
Secretary

WHF/PF/kp

cc: Ollie J. Bower
RKW Engineering Services
Paul W. Olson, Board of Supervisors Chairman, Tredyffrin Township
Jeffrey C. May, Planning Commission Chairman, Tredyffrin Township
Terry Flone Woodman, Assistant Township Manager, Tredyffrin Township
Ronald Wagenmann, Manager, Upper Merion Township
Montgomery County Planning Commission



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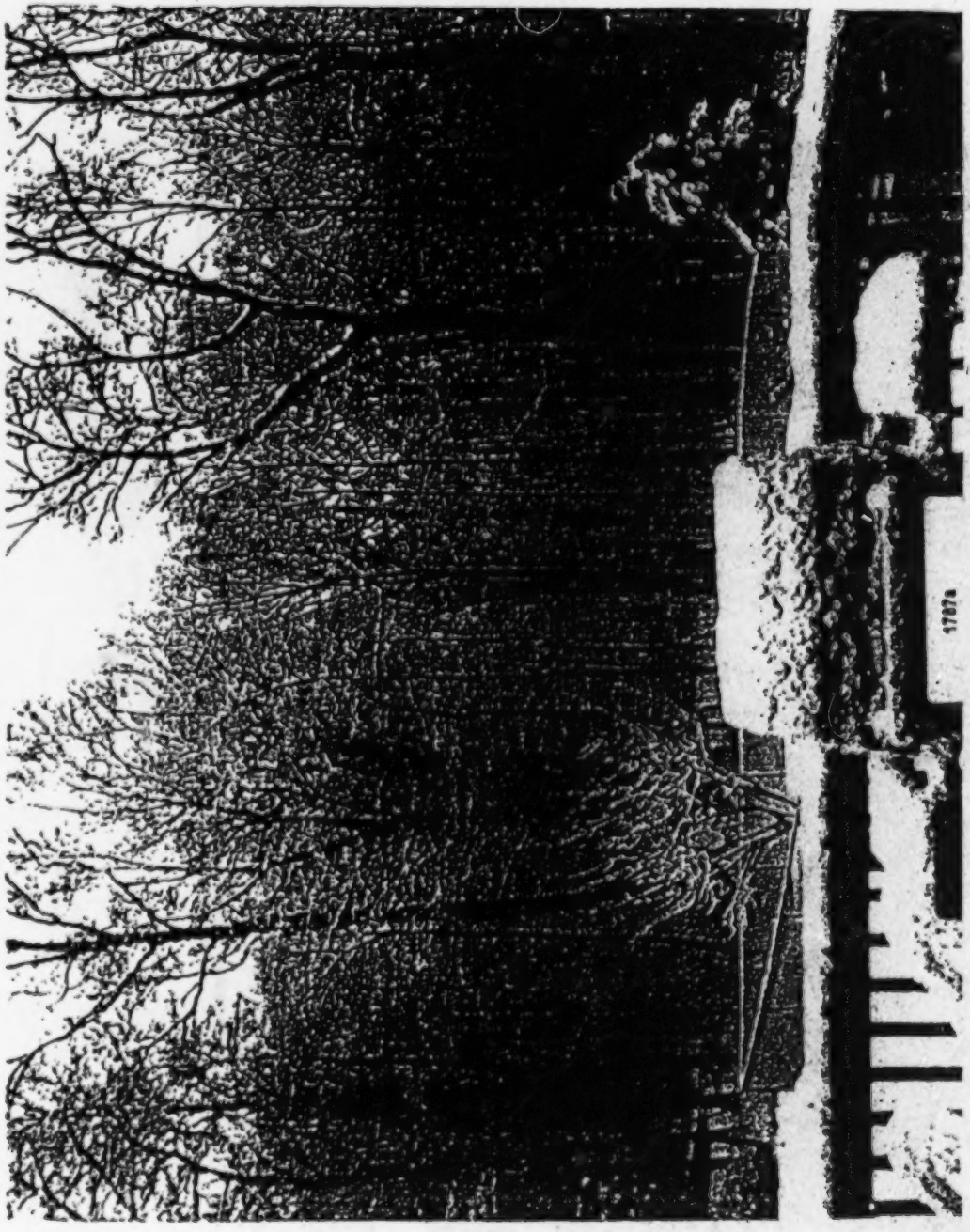

http://www.timesherald.com/site/news.cfm?newsid=10754775&BRD=1672&PAG=461&dept_id=33380&rfi=6

Township fights golf course ruling

By: KEITH PHUCAS, Times Herald Staff

01/06/2004

UPPER MERION - After discovering a former state Supreme Court justice previously represented a firm interested in developing Valley Forge Golf Club, the township asked the court to withdraw a recent decision clearing the way for commercial development of the property.

In the township's request to have the decision withdrawn and have the case reargued, the municipality accused former Pennsylvania Supreme Court Justice William Lamb of a conflict of interest in the zoning case.

On Dec. 18, Lamb wrote the majority opinion reversing a prior court decision that denied developer Realen Valley Forge Greenes Associates' request to change the golf course's zoning from agricultural to commercial use.

In the decision, Lamb wrote that the township's Zoning Hearing Board overstepped its authority when it refused to change the zoning.

For nearly seven years, Realen Valley Greenes Associates has been trying to win approval to build a shopping center, two hotels, commercial offices, 480 apartment units and 192 townhouses on the 135-acre property on North Gulph Road, in the heart of King of Prussia.

However, the Upper Merion zoning board denied the firm's requests.

In 1981 and 1982, Lamb, then an attorney representing Acorn Development Corp., twice argued to have part of the golf course rezoned to allow for commercial development for his client. The zoning board twice denied Acorn's requests.

Ralph Volpe, chairman of Upper Merion's Board of Supervisors, researched the hearing records that dated back more than two decades, which confirmed his suspicions that Lamb had been involved.

Volpe believes Lamb's handling of the case is clearly biased, and said the former justice should have recused himself.

"It's unbelievable to me that he could have done this and not tell anybody," Volpe said. On Jan. 31, 2003, the state Senate confirmed Lamb as a temporary replacement for Justice Stephan Zappala, who had retired from the bench.

Lamb, who has returned to private practice at his West Chester law firm, said he did disclose his past involvement with the Valley Forge Golf Club to both attorneys arguing the case before the state Supreme Court last year.

"I raised that issue at oral argument and (neither) of the parties had a problem with it," Lamb said.

In the court decision, the justices said that Upper Merion's zoning board overstepped its power when it denied Realen's 1999 zoning challenge, and that the decision constituted unlawful "reverse spot zoning."

The term "spot zoning" refers to singling out a parcel of land and treating it differently from surrounding properties. Such practices are unconstitutional.

The court concluded that because a substantial portion of property surrounding the golf course was previously zoned agricultural, and had been rezoned for commercial use over the years, the township's efforts to block a similar zoning change for the property was illegal.

Golf course owner Hankin Family Partnership has a conditional agreement of sale with the Realen group.

Realen filed its initial zoning challenge in 1997. The township's zoning board held 14 hearings on the application before finally turning it down in August 1999. Previously, the township zoning board ruled the golf course's agricultural zoning was, in fact, flexible enough to provide reasonable use of the land.

The zoning permitted a variety of uses, including single-family homes; an educational or religious facility; a hospital or convalescent home; or laboratory for scientific, agricultural or industrial research.

However, Realen had not shown an interest in pursuing these other uses.

In 1998, the township offered to purchase the golf course from the Hankin partnership for $4.8 million. However, Volpe said, the township never received a response to the offer.

In 2001, the Hankin partnership filed a court petition alleging the municipality substantially limited the property's future development and sued Upper Merion for about $24 million.

Currently, a federal civil rights action has been on hold while the zoning case was being decided by the state Supreme Court.

Valley Forge Golf Club first opened in 1924 and was eventually zoned in 1953.

By Keith Phucas can be reached at kphucas@timesherald.com or at 610-272-2501, ext. 211

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Posted on Thu, Nov. 27, 2003

Chesco judge Sanchez nominated to U.S. bench

Several openings in Pennsylvania's Eastern District should give the GOP a long-term influence on the court's makeup.

By Kathleen Brady Shea and Tom Infield

Inquirer Staff Writers [editor's note: *Philadelphia Inquirer*]

Chester County Court Judge Juan R. Sanchez, a native of Puerto Rico who grew up in a Bronx housing project, has been nominated by the White House for a seat on the federal bench.

The nomination is for one of up to five federal judgeships that may be filled in the coming months in Pennsylvania's Eastern District. The openings present Republicans with an opportunity to shape the judicial makeup of the court for years to come.

Sanchez, 47, would replace U.S. District Court Judge Jay C. Waldman in Pennsylvania's Eastern District. Waldman died of cancer in May.

"It is hard to put into words how I feel," Sanchez said yesterday, after receiving the news Tuesday evening. "This is a tremendous privilege and an honor; I am grateful for the President's nomination and for all the support I received during the process."

Sanchez's name was submitted to the White House with the backing of Pennsylvania's Republican leadership, including the party's organization in Chester County. He must now pass muster with the Senate Judiciary Committee, which will make a recommendation to the Senate, which votes on the selection.

Sanchez, known for his work ethic and passion for the law, said he did not expect the process to begin until January.

"I've absolutely no doubt that he will be confirmed quickly and smoothly," said Chester County Court Judge Robert J. Shenkin. "After all, when you look at him and his record, what's there not to like?"

Sanchez made national news in the summer when he ordered a West Chester man who spit at a police officer to read and prepare a book report on "To Kill a Mockingbird," which has a pivotal spitting sequence.

"Judge Sanchez can best be described as a dynamo," said President Judge Howard P. Riley Jr. "I don't know where he gets the time and energy to do all the projects he does, but he never does any of them halfheartedly; he'll be a huge loss."

U.S. District Judge J. Curtis Joyner, the last Chester County judge to join the federal bench, in 1992, said he expected Sanchez to be confirmed easily.

"He's already cleared the biggest hurdles," Joyner said. "I think it's wonderful; Chester County needs added representation on the federal circuit, and Juan is an excellent jurist."

Sanchez is the third Philadelphia-area Republican nominated by Bush to the Eastern District court this month.

The nomination comes amid an unusually large number of openings and anticipated openings - as many as five - between now and early next year. The court currently has 19 active judges and 17 senior judges.

Taken together, the openings give the White House and its Pennsylvania GOP allies a chance to have a long-term influence on the makeup of the court.

On Nov. 3, Bush nominated Gene E.K. Pratter, a partner in Duane Morris L.L.P., a major national law firm based in Philadelphia. Pratter, of Bryn Mawr, would fill a spot that was more or less allotted to the GOP in Montgomery County. Pratter and her husband, Robert, have been election-campaign donors to Bush, Sens. Arlen Specter and Rick Santorum, and the Republican National Committee.

On Nov. 6, Bush nominated Lancaster County Common Pleas Court Judge Lawrence F. Stengel, 51, to replace another judge from the county on the federal bench.

Presidents traditionally have acceded to in-state political forces when nominating federal court judges. The rule of thumb in Pennsylvania has long been that the party holding the White House gets three nominations for every one given to the party that is out of power.

A state's U.S. senators typically play a lead role in selecting the nominees. In Pennsylvania, Republicans Specter and Santorum have more or less agreed to split the state, east and west. Santorum, who is from Pittsburgh, has the larger influence in selection of nominees from the western part of the state. Specter tends to hold sway in the east.

A judicial nominating panel, which interviewed candidates for the Eastern District slots on behalf of Specter and Santorum, is chaired by Thomas R. Kline, law partner of Specter's son, Shanin.

"Political leaders also have their favorites who they put forward," said Alan P. Novak, Pennsylvania Republican chairman.

In Chester County, GOP leaders have been pushing for one of their own to step up to the bench.

Novak, former Chester County Republican chairman, said Sanchez was long his choice, along with that of current [illegible] Brown and former Chairman William Lamb. Lamb is [illegible] Superior Court and is barred from participating in partisan politics.

"We all sang from the same hymnal on this one," Novak said. "If Chester County was going to get a judgeship, we wanted that to be Judge Sanchez.

"Judge Sanchez had to make his own case to the senators, to the White House, and through the interview process," he said. "The candidates still have to stand on their own two feet."

Novak said that because Sanchez was an assistant public defender, "everyone assumes he is a moderate."

"But I think people, when they look at him as a judge, consider him as fairly conservative," Novak said. "I think he is a tough judge when it comes to law-and-order issues."

It may be in Specter's interest to have judicial nominees whom he supports to be regarded as political conservatives.

Specter, who is running for reelection next year, faces a party opponent, U.S. Rep. Patrick Toomey, who has criticized him as too liberal for the state GOP.

Contact staff writer Kathleen Brady Shea at 610-701-7625 or kbrady@phillynews.com.

October 9-15, 2003

political notebook

Judge Ye

by Mary F. Patel

In case anyone is interested, voters will also be choosing judges in the Nov. 4 general election. While the focus has been on the hotly contested mayor's race and Republican City Council at-large races, the judicial elections are just as important.

It is vital to elect competent judges because the odds are you will end up in front of one of them at some point in your life. Even if you're not accused of a crime, many people in this town are either suing or being sued. A renowned trial lawyer once said, If you haven't been sued, you haven't lived.

At the top of the judicial ticket are candidates for the State Supreme Court. There is one opening on the Supreme Court. Former Justice **Stephen Zappala**, a Democrat, stepped down in late 2002 due to mandatory retirement. Republican **William Lamb** was appointed by former Gov. **Mark Schweiker** to fill the vacancy through the end of the year, on the condition that Lamb would not run.

Democrat **Max Baer** and Republican **Joan Orie Melvin** are competing for the Supreme seat. Melvin is currently a state Superior Court judge. Her sister is State Sen. **Jane Clare Orie**, who is also her campaign chair. Melvin, who is said to be a devout Catholic, has not discussed her views on choice, but has been endorsed by LifePac and other pro-life groups.

Baer is a Pittsburgh Common Pleas Court Judge and makes no bones about the fact that he is pro-choice. In an interview this summer, Baer said that he thought the biggest issue in this race will be abortion rights.

Even if Baer wins the open seat on the Supreme Court, Republicans will still dominate the seven-member court.

Chief Justice **Ralph Cappy** is a Democrat. So is Justice **Russell Nigro**. Justice **Ron Castille**, who is facing a vote on his retention in this ballot, is a Republican, as are Justices **Sandra Schultz Newman**, **Michael Eakin** and **Thomas Saylor**.

Even though the Supreme Court only hears cases at its discretion, the high court is very busy. And although you will probably be lucky enough not to ever have any interaction with the Supreme Court directly, they are the administering authority for all of the lower courts and therefore all state justice.

The Supreme Court hears 7 to 10 percent of all cases. For example, in a county court there were 2,760 cases appealed to the Supreme Court and they heard 189 of those cases. But they did review the other 2,571 cases, said **Arthur Heinz** of Supreme Court Administration.

Death penalties are automatically appealed to them.

Heinz mentioned other major projects that the Supremes are involved with.

Justice Newman is currently working with a subcommittee to assess the needs of security in the courtroom, said Heinz. And other justices are involved with working to have information about cases in the lower courts available online. Currently, the status and latest update of appellate court cases is available online. Such information is not available for Common Pleas Court cases. (Philadelphia Municipal Court maintains its own website that has information about the court and its schedule.)

There are three openings in the state Superior Court. This is where appeals go from Common Pleas Court decisions. It is a busy and active court because many parties appeal lower court decisions and the court must hear all of them.

The three Republicans running are **Susan Gantman**, a former assistant district attorney in Montgomery County, **Grainger Bowman**, a former deputy district attorney in Dauphin County, and **Palmer Dolbin**, a Schuylkill County Common Pleas Court judge.

The Democrats in the race are Philadelphia Municipal Court Judge **Seamus McCaffery**, Northampton Common Pleas Court Judge **Jack Panella** and Westmoreland County Common Pleas Court Judge **John Driscoll**.

There is not much action with local judgeships. There are 11 openings on Common Pleas Court and the 11 candidates who won in last May's primary are guaranteed to win in the general election because they are all cross-filed as Democrats *and* Republicans. **Gerard Kosinski**, a well-known ward leader, is the lone Municipal Court candidate on the ballot.

Superior Court President Judge **Joseph Del Sole** is up for a retention vote, as is Commonwealth Court President Judge **James Gardner Colins**. There are 14 Common Pleas Court judges up for retention and five Municipal Court judges up for retention.

The **Ron Patel** Scholarship Fund is now accepting applications for 2004. This year, the $5,000 scholarship will be awarded to a photojournalism student to advance his or her graduate or undergraduate education. Each applicant should submit his or her photo essay on a CD, which must be accompanied by a résumé and a letter of recommendation from an instructor. Mail CDs to Mary Patel, President, Ron Patel Scholarship Fund, Pen & Pencil Club, 1522 Latimer St, Philadelphia, PA 19102. The deadline is Dec. 1, 2003.

The Philadelphia Conference, a consortium of photographers and photojournalists, is assisting with outreach and has details about the scholarship on its website, www.philadelphiaconference.org.

Ron Patel was the renowned editor of the Sunday *Inquirer*, and this reporter's husband, until his death on Jan. 7, 2000.

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http://www.pegweb.org/Political/political_news.htm

Pennsylvanians for Effective Government

Political News

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January 2003

JUDICIAL RACES. The statewide elections in 2003 are for judicial vacancies. There will be three Superior Court vacancies and one Supreme Court vacancy filled in November. [redacted] this month of William Lamb [redacted] term through November. Lamb was nominated with the agreement that he would not be a candidate. The Supreme Court vacancy comes from the mandatory retirement at age 70 of former Chief Justice Stephen A. Zappala. The Superior Court hears appeals of criminal and civil cases. Its decisions can set statewide precedents in civil jury awards – crucial matters to the business community in product liability and professional malpractice cases.

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APPENDIX N - **EXCERPTS** FROM UNCONSOLIDATED PENNSYLVANIA STATUES TITLE 53: MUNICIPAL CORPORATIONS

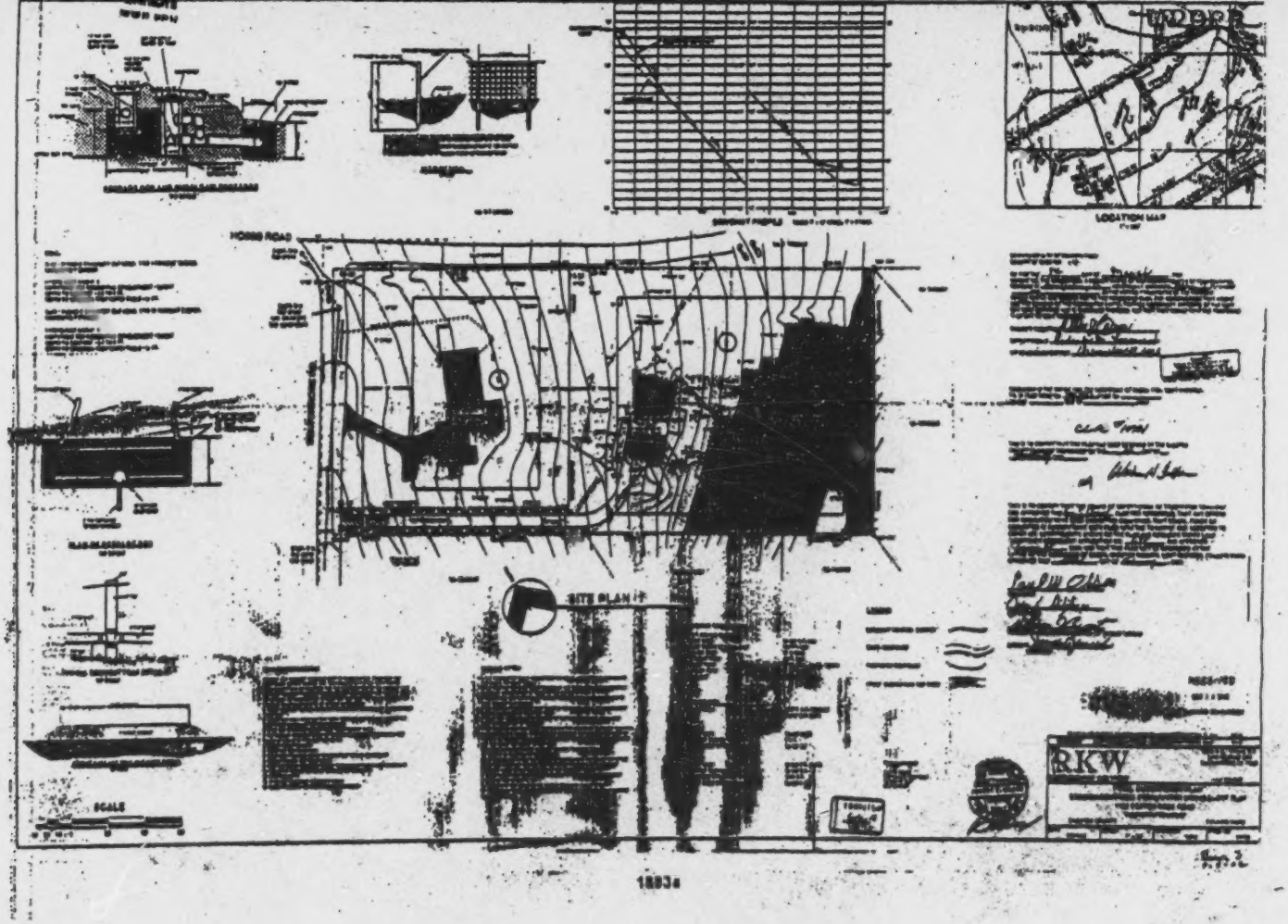
CHAPTER 30. PENNSYLVANIA MUNCIPALITIES PLANNING CODE

§10908. Hearings.

The board shall conduct hearings and make decisions in accordance with the following requirements:

(1) Public notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the board. in addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

(1.1) The governing body may prescribe reasonable fees with respect to hearings before the zoning hearing board. Fees for said hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs, however, shall not include legal expenses of the



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SITE PLAN

CONSTRUCTION STAGING

EROSION AND SEDIMENT CONTROLS MUST BE CONSTRUCTED, STABILIZED AND FUNCTIONAL BEFORE ANY SITE DISTURBANCE MAY BEGIN. ONLY LIMITED DISTURBANCE SHALL BE PERMITTED FOR THE CONSTRUCTION OF THESE EROSION AND SEDIMENT CONTROL FACILITIES. CONSTRUCTION PROCEDURE AND STAGING SEQUENCE ARE CRITICAL TO CAREFULLY LIMIT DISTURBANCE TO ENSURE THAT THE SITE REMAINS STABILIZED THROUGHOUT CONSTRUCTION. CONSTRUCTION IS TO BE STAGED AS FOLLOWS:

1) PLACE SEDIMENT CONTROL BARRIERS IMMEDIATELY DOWNHILL OF EARTH MOVING ACTIVITIES.

2) CLEAR AND GRUB CONSTRUCTION AREA, REMOVING THE SMALLEST AMOUNT OF VEGETATION NECESSARY FOR CONSTRUCTION.

3) STORE AND STOCKPILE TOPSOIL FROM CONSTRUCTION AREA.

4) THE TOPSOIL STOCKPILE SHALL BE TEMPORARILY SEEDED WITH ANNUAL RYE GRASS AT A RATE OF 4 LBS. PER 1000 SQ. FT.

5) ROUGH GRADE DRIVEWAY

6) EXCAVATE FOR FOUNDATION.

7) CONSTRUCT BUILDING, GRADE DRIVEWAY AND INSTALL STONE BASE.

8) SPREAD TOPSOIL AND FINISH GRADE.

9) SEED AND MULCH DISTURBED AREA IN ACCORDANCE WITH RADOT FORMULA B.

10) EXCAVATE AND INSTALL STONE SEEPAGE BED AND SEPTIC.

11) PAVE DRIVEWAY.

12) STABILIZE ADDITIONAL DISTURBED AREAS.

13) REMOVE EROSION AND SEDIMENT CONTROLS.

GENERAL NOTES:

1. THE CONTRACTOR SHALL COMPLY WITH ALL LOCAL AND STATE REQUIREMENTS GOVERNING THE WORK SHOWN.

2. THE CONTRACTOR MUST VERIFY LOCATIONS AND ELEVATIONS OF ALL UNDERGROUND UTILITIES BEFORE START OF WORK. AS PER ACT 287.

3. EXCAVATION AND STRIPPING OF TOPSOIL SHALL BE KEPT TO A MINIMUM.

4. TEMPORARY STORMWATER MANAGEMENT CONTROL MEASURES SHALL BE CONSTRUCTED BEFORE EARTHMOVING ACTIVITIES BEGIN.

5. ALL CONSTRUCTION AREAS SHALL BE CLEARED OF SILT AND DEBRIS AT THE END OF EACH WORKING DAY.

6. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF EXCAVATION TRENCHES, EMBANKMENTS, SLOPES, SPOILS, STOCKPILES OR OTHER APPROVED EARTHWORK AND SHALL BE USED ON THE SITE TO PREVENT EROSION, SEDIMENT RUNOFF AND SPILLAGE OF MATERIALS NOT SHOWN BUT LIE WITHIN THE INTENT OF THE PLAN.

7. SILT FENCE, STRAW BALES, OR OTHER APPROVED SEDIMENT CONTROL BARRIERS SHALL BE PLACED AS DIRECTED BY THE ENGINEER.

8. THE LONG TERM MAINTENANCE AND OPERATION OF THE STORMWATER FACILITY FOR THE CONVEYANCE OF RUNOFF FROM THE DEVELOPMENT AREA AND SEDIMENT BASIN AND SEDIMENT TRAP AND OTHER STORMWATER MANAGEMENT FACILITIES SHALL BE THE OBLIGATION OF THE PROPERTY OWNER.

9. TOPOGRAPHY FROM INFORMATION PROVIDED BY THE [illegible] FIELD SURVEY BY THIS OFFICE (1/94).

10. ELEVATIONS ARE BASED ON THE [illegible] DATUM.

11. DOWNSPOUTS SHALL BE CONNECTED TO [illegible] WRAPPED WITH FILTER FABRIC.

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zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

(1.2) The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

(2) The hearing shall be conducted by the board or the board may appoint any member as a hearing officer. The decision, or where no decision is called for, the findings shall be made by the board; however, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the board and accept the decision or findings of the hearing officer as final.

(3) The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. the board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose.

(4) The chairman or acting chairman of the board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

(5) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

(6) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(7) The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for as stenographer shall be shared equally by the applicant and the board. The cost of the original transcript shall be paid by the board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

(8) The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advise from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given opportunity to be present.

(9) The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings, and the board's decision shall be entered no later than 30 days after the report of the hearing officer. Where the board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within 60 days from the dated of the applicant's request for a hearing, decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as

provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

(10) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the board not later that the last day of the hearing, the board shall provide by bail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

§ 10908.1. Mediation option.

[to be inserted]

§ 10909. [Repeated.

§ 10909.1 Jurisdiction.

(a) The zoning hearing board shall exclusive jurisdiction to hear and render final adjudications in the following matters:

1. Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1 (a)(2).

2. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges

shall be raised by an appeal taken within 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.

3. Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

4. Appeals from a termination by a municipal engineer or the zoning officer with reference to the administration if any flood plain or flood hazard ordinance or such provisions within a land use ordinance.

5. Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 910.2.

6. Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1

7. Appeals from the determination of any officer or agency charged with the administration of any trans

fers of development rights or performances density provisions of the zoning ordinance.

8. Appeals from the zoning officer's determination under section 916.2.

9. Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Article V or VII applications.

(b) The governing body or, except as to clauses (3), (4) and (5), the planning agency, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

1. All applications for approvals of planned residential developments under Article VII pursuant to the provisions of section 702.

2. All applications pursuant to section 508 for approval of subdivisions or land developments under Article V. Any provision in a subdivision and land development ordinance requiring that final action concerning subdivision and land development applications to be taken by a planning agency rather than the governing body shall vest exclusive jurisdiction in the planning agency in lieu of the governing body for purposes of the provisions of this paragraph.

3. Applications for curative amendment to a zoning ordinance pursuant to section 603 (c)(2).

4. Applications for curative amendment to a zoning ordinance pursuant to sections 609.1 and 916.1 (a)(2).

5. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in section 609.. Any action on such petitions shall be deemed legislative acts, provided the nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.

6. Appeals from the determination of the zoning officer or the municipal engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation an erosion control and storm water management insofar as the same related to application for land development under Articles V and VII. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the zoning officer or the municipal engineer shall be to the zoning hearing board pursuant to subdivision (a)(9). Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the planning agency, all appeals form determinations under this paragraph shall be to the planning agency and all appeals from the decision of the planning agency shall be to court.

7. Applications for a special encroachment permit pursuant to section 405 and applications for a permit pursuant to section 406.

§ 10910.1. Applicability of judicial remedies.

Nothing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091 (relating to action in mandamus).

UNCONSOLIDATED PENNSYLVANIA STATUES (TITLE 53)

PENNSYLVANIA MUNCIPALITIES PLANNING CODE

Article X-A. Appeals to Court.

§ 11001 – A. Land use appeals.

§ 11002 – A. Jurisdiction and venue on appeal; time for appeal.

§ 11003 – A. Appeals to court; commencement; stay of proceedings.

§ 11004 – A. Intervention.

§ 11005 – A Hearing and argument of land use appeal.

§ 11006 – A. Judicial relief.

§ 11001 – A. Land use appeals

The procedures set forth in this article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act.

§ 11002 – A. Jurisdiction and venue on appeal; time for appeal.

All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order) or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 908(9) of this act.

§ 11003-A. Appeals to court; commencement; stay of proceedings.

(a) Land use appeals shall be entered as of course by the prothonotary or clerk upon the filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(b) Upon filing of a land use appeal, the prothontary or clerk shall forthwith, as of course, send to the governing body, board or agency whose decision or action has been appealed,

by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said governing body, board or agency, within 20 days after receipt thereof, to certify to the court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency at the time it received the write of certiorari.

(c) If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the land use appeal is filed, shall serve a true copy of the land use appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

(d) The filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented

on the merits of the case. It shall be the burden of the landowners to provc the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. An order denying a petition for a bond shall be interlocutory. And order directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond, such responding party, upon motion of petitioner and, after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

§ 11004-A. Intervention.

Within the 30 days first following the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of services of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

§11005-A. Hearing and argument of land use appeal.

If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive ad

ditional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeals brought before the court pursuant to section 916/1 shall be remanded for further hearings before any body, agency or officer of the municipality. If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact or if additional evidence is taken by the court or by a referee, the court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

§ 11006-A. Judicial relief.

(a) in a land use appeal, the court shall have power to declare any ordinance or map invalid and set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal.

(b) Where municipalities have adopted a joint municipal comprehensive plan an enacted a zoning ordinance or ordinances consistent with the joint municipal comprehensive plan within a region pursuant to Articles VIII-A and XI, the court when determining the validity of a challenge to such a municipality's zoning ordinance, shall consider the zoning

ordinance or ordinances as they apply to the entire region and shall not limit its consideration to the application of the zoning ordinance within the boundaries of the respective municipalities.

(b.1) Where municipalities have adopted a multimunicipal comprehensive plan pursuant to Article XI but have not adopted a joint municipal ordinance pursuant to Article VIII-A and all municipalities participating in the mulitmunicipal comprehensive plan have adopted and are administrating zoning ordinances generally consistent with the provisions of the mulitmunicipal comprehensive plan, and a challenge is brought to the validity of a zoning ordinance of a participating municipality involving a proposed use, then the court shall consider the availability of uses under zoning ordinances within the municipalities participating in the mulimunicipal comprehensive plan within a reasonable geographic area and shall not limit its consideration to the application of the zoning ordinance on the municipality whose zoning ordinance is being challenged.

(c) if the court finds that an ordinance or map, or a decision or order thereunder, which has been brought up for review unlawfully prevents or restricts a development or use which has been described by the landowner through plans and other materials submitted to the governing body, agency, or officer of the municipality whose action or failure to act is in question on the appeal, it may order the described development or use other elements to the governing body, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order.

(d) Upon motion by any of the parties or upon motion by the court, the judge of the court may hold a hearing or hearings to receive additional evidence or employ experts to aid the court to frame an appropriate order. If the court employs an expert, the report or evidence of such expert shall be available to any party and he shall be subject of examination or cross-examination by any party. He shall be paid reasonable compensation for his services which may be assessed against any or all of the parties as determined by the court. The court shall retain jurisdiction of the appeal during the pendency of any such further proceedings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.

(e) The fact that the plans and other materials are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits hall not prevent the court from granting the definitive relief authorized. The court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.